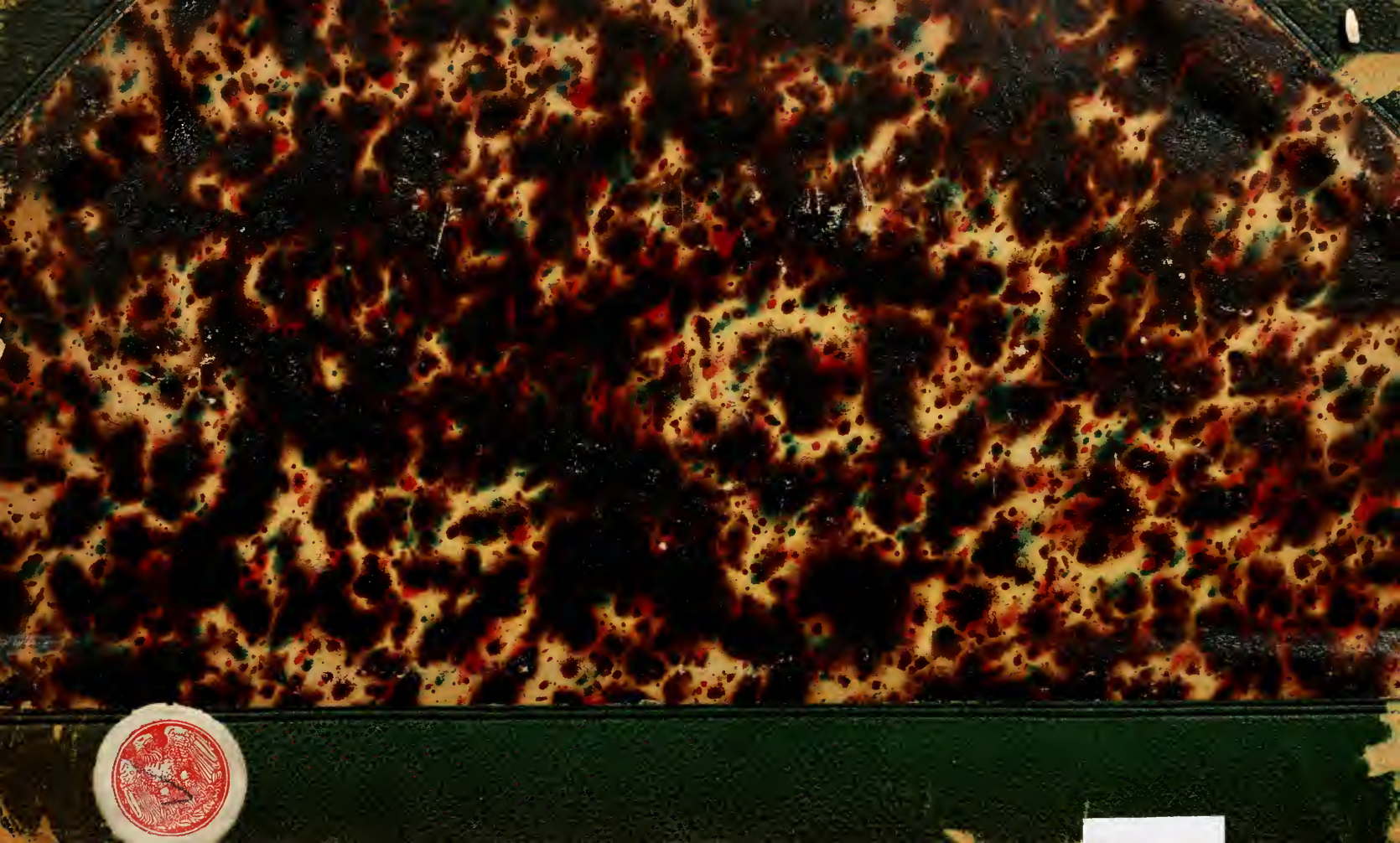

FREE REMARKS

ON

The Spirit of the Federal Constitution, the Practice of the Federal Government,

AND THE

OBLIGATIONS OF THE UNION,

RESPECTING

THE EXCLUSION OF SLAVERY

FROM THE

Territories and New States.

"If it was possible for men who exercise their reason to believe, that the Divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom as the objects of a legal dominion, never rightfully resistible, however severe and oppressive, the inhabitants of these Colonies might at least require from the Parliament of Great Britain some evidence that this dreadful authority over them has been granted to that body." Declaration of the United Colonies (July 6, 1775).

BY A PHILADELPHIAN.

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FREE REMARKS.

SECTION I.

THE original members of this republican confederacy, when colonies, found their political liberty menaced with an abridgment which yet would have left them, perhaps a larger portion of that blessing, and more scope for self respect and independent exertion, than were enjoyed by the nations of the European continent styling themselves the most free. But, exquisitely jealous and inflexibly tenacious of all the privileges known to the most liberal scheme of government, they resisted the first and slightest inroads upon those privileges, and in maintaining them, encountered with unshaken resolution, the severest trials and most formidable dangers. Throughout their magnanimous struggle, they bottomed their claim to them, not merely on the British constitution, their charters, and prescription, but on the nature of man and the behest of Providence. They ascended to first principles in their own favour; and in their Declaration of Independence,* began by proclaiming that *all men* are equal, and endowed by their Creator with certain *unalienable* rights, such as life, *liberty*, and the pursuit of happiness. They repeated this doctrine in their subsequent manifestoes;† they obtested Heaven and earth on the same ground; they constantly upbraided Great Britain with her *inconsistency* in endeavouring

* See, too, the Declaration of Rights of the Congress assembled at Philadelphia, September 1774: And the Declaration of the United Colonies (July 6, 1775) on taking up arms.

† See their Addresses to the People of the Colonies,

to wrest from them what her subjects at home vaunted as *their* birthright, and in refusing to extend to all within the pale of her empire the full enjoyment of her constitution.* They pointed to the works of Sidney and Locke as the manuals of their immediate forefathers, and their own text-books; they even appealed to the Bible in confirmation of the natural equality and independence of all the species.† This maxim, such of them as at once remodelled their respective governments, had placed the first in the list of fundamentals;‡ it was, in short, the device of the revolution; the frontispiece of all the revolutionary institutions.

The confederated colonies did not confine themselves to the assertion of the broadest theory of political rights; they descanted upon the topics of philanthropy and universal justice, of *Christian* charity and humility; and in reproaching the mother-country with the contrariety between her practice and professions, with her insensibility to human suffering and degradation, they took credit to themselves for the reverse. It was in alleged pursuance of those high considerations and pretensions to which I have adverted, that their delegates in Congress, without being specially empowered, passed and promulgated, several months before the Declaration of Independence, (6th April, 1776), a resolution that no slaves should be imported into any part of the confederation.§

With all these circumstances, there was one feature in the social condition of most of the states, standing out in offensive contrast. The *negro-slavery* which existed among them, formed a strange commentary upon the texts with which they sermonized throughout their revolution, and seemed to the distant world a gross anomaly and incongruity, giving

* See the Address (July 8, 1775) of the United Colonies to the Inhabitants of Great Britain: Also—the Address (May 26, 1775) to the Canadians; and the Address (July 28, 1775) to the People of Ireland.

† See note A.

‡ Constitution of Massachusetts. "All men are born free and equal, and have certain natural, essential, and inalienable rights," &c. The language of the Constitutions of New Hampshire, New York, Pennsylvania, *Delaware*, &c. is the same. See note B.

§ See the Journals of Congress for 1776.

to their revolutionary creed, and regenerated polity, an air of imposture or infatuated selfishness. They could not be supposed to entertain the opinion, that the African race did not belong to the family of man; or that, if gifted with less vigorous and comprehensive faculties of mind, that race or any other so disadvantaged, became a lawful prey to the more fortunate one, to be held in absolute property and unqualified subjection: Such opinions were understood to be exploded and scorned throughout Christendom.* They could not be admitted to be blind to the inherent wickedness and deformity of hereditary servitude; they had universally testified their conviction on this head in their denunciations of Great Britain; some of them had abolished the evil, avowedly from a sense of its enormity, as soon as they acquired the power, by their liberation from her yoke. Our negro-slavery presented itself, therefore, to the eyes of those who were unacquainted with its history and incidents, in a scandalous and opprobrious abstraction;—as a fixed contradiction and solecism disfiguring both our juridical and political codes.

Of these unfortunate appearances, all our federal assemblies, from the commencement of the revolution to the formation of our present government, must have been fully aware: but they were supported against the disgrace, by the knowledge that this slavery was not introduced, and could not be at once effaced, by the new sovereignties which they represented. It was a pre-existing, unavoidable evil, imputable to the mother country; and of which the extirpation was not to be even attempted, until the federal empire, at which they aimed, should be consolidated, and the American nation not only secure in independence, but matured in strength and resources. They were conscious, that, sooner, nothing could reasonably be expected from them; except, perhaps, the declaration that a course of remedy would be entered upon when that state of affairs was reached; and its uncertainty at the outset of the revolution, is the best excuse which can be offered why the first of them did not pledge the nation to the effort. It was, perhaps, due to consistency,

* See note C.

to national honour, and to the cause of justice and morals, that the extirpation of slavery from the American soil, when this might be practicable, should be proclaimed a primary and settled purpose with the confederation which asserted such a character, such dispositions, and such motives of action, as are detailed in the Declaration of Independence.*

The Congress of 1787 would seem to have been particularly alive to the obligations in this matter, imposed by the facts which I have indicated above. They recognized the principle of *universal abolition*, in their proceeding with respect to the North West Territory; of which proceeding the history and import are especially worthy of attention.

The whole territory north of the river Ohio, and west of the state of Pennsylvania, extending northwardly to the northern boundary of the United States, and westwardly to the Mississippi, was claimed by Virginia. The states of Massachusetts and Connecticut claimed all that part which was within the breadth of their respective charters, and the state of New York had also an indeterminate claim to the country. As early as the year 1780, Congress recommended to all the states whose charters included ungranted territory, to cede it to the Union for national purposes; and the states without such territory, always contended that the lands gained by the common exertions, were or ought to be common property.† Some of the smaller withheld their ratification of the articles of confederation, in order to compel the cession for which they called as matter of right; and finally they carried their point. The act of cession of the state of New York is prefaced with the following recital.

"Whereas nothing under Divine Providence, can more effectually contribute to the tranquillity and safety of the

* The revolutionary governments of South America, in forming their constitutions, either emancipated the slaves at once, or fixed a period for emancipation. See the work entitled "Outline of the Revolution in South America."

† See Ramsay's History of the United States, Chap. 29.

United States of America, than a federal alliance, on such liberal principles as will give satisfaction to its respective members; and whereas the articles of confederation and perpetual union, recommended by the honourable Congress of the United States of America, have not proved acceptable to all the states, it having been conceived that a portion of the waste and uncultivated territory, within the limits or claims of certain states, ought to be appropriated as a common fund for the expenses of the war: and the people of this state of New York, being, on all occasions, disposed to manifest their regard for their sister states, and their earnest desire to promote the general interest and security; and more especially to accelerate the federal alliance, by removing, as far as it depends upon them, the before mentioned impediment to its final accomplishment, &c."

The act of cession from the state of Massachusetts commences in the following language: "Whereas several of the states in the union have at present no interest in the great and extensive tract of uncultivated country, lying in the western part of the United States, and it may be reasonable that the states abovementioned should be interested in the aforesaid country, &c. &c."

Of the immense territory ceded from these motives, the portion which Virginia conveyed was by far the largest. In two of the states, parties to the grant, *slavery* was still permitted; in the other two it had been abolished. None of them imposed a condition upon the United States, in their acts of cession, as to the toleration or prohibition of slavery in the countries ceded. Nor was there any general stipulation in favour of the settlers in them, on the score of the slaves which they held. But the Congress had added, to their recommendation abovementioned (of the 6th September 1780) a resolution dated October 10th, 1780 that "the unappropriated land which might be ceded or relinquished to the United States, should be settled and formed into distinct republican states, which should become members of the federal union, and have the same *rights of sovereignty*, freedom, and independence, as the other states." The state of

Virginia, in the act (20th October 1783) empowering her delegates to transfer to the United States, annexed to the authority, the condition, that "the territory ceded should be laid out and formed into states, and that the states so formed should be formed into republican states, and *admitted members of the federal union, having the same rights of sovereignty, freedom, and independence as the other states.*"

The North-West Territory being thus put, with these restrictions, at the disposal of the United States, Congress, their only representation, proceeded, by the same right by which they had negotiated and received the cession of the territory, to make permanent regulations for it; and passed accordingly an ordinance, dated July 13, 1787, for its government. This ordinance, worthy of the highest admiration for its perfect coincidence with all the principles and actions of which I have spoken,—after making various dispositions, runs thus:—"And *for extending the fundamental principles of civil and religious liberty*, which form the basis whereon these republics, their laws, and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter, shall be formed in the said territory; to provide for the establishment of states therein and for their admission to a share in the federal councils on *an equal footing with the original states*, at as early periods as *may be consistent with the general interest*, it is hereby ordained and declared, that the following articles shall be considered as articles of compact, between the original states and the people and states of the said territory, and for ever remain unalterable, unless by common consent, &c."

The second of these solemn articles provides that no *man* shall be deprived of his *liberty* or property but by the judgment of his peers, or the laws of the land, &c.: The third provides that the property, rights, and *liberty* of the Indians shall never be disturbed or invaded: The fifth provides that there shall be formed in the said territory, not less than three, nor more than five states, and that such states shall be admitted into the confederacy, *on an equal foot-*

ing with the original states in all respects whatever. The *sixth article*, with which we have now particularly to do, is as follows—" *There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted;* provided always, that any person escaping into the same, from whom labour or service is lawfully claimed in any one of the *original* states, such fugitive may be lawfully claimed, and conveyed to the person claiming his or her labour or service as aforesaid."

We thus see that the Congress, in the first instance in which a portion of the American territory was subjected to their jurisdiction, prohibited *slavery* for ever, in that portion; declaredly in pursuance of the general view of extending the fundamental principles of civil and religious liberty, and of fixing and establishing those principles as the basis of new republics which were to be introduced into the confederacy. In excluding slavery on these grounds, they stigmatized it as repugnant to the noble ends just stated; and have justified me in asserting that they recognized the principle of universal abolition. At least, it cannot be denied that they proclaimed the principle of its exclusion from all the new states, which might be admitted into the confederacy. This inference is fortified by the tenor of the provision in the sixth article concerning fugitive slaves, the right to recover whom, is limited to the *original* states. That the Congress looked to the addition of new members, besides the states to be formed out of the North Western Territory, is evident from the following provision of the fourth article; " the navigable waters leading into the Mississippi and the St. Lawrence and the carrying places between the same, shall be common highways and for ever free as well to the inhabitants of the said territory, as to the citizens of the United States, *and those of any other states that may be admitted into the confederacy.*"

The Congress proclaimed further, by the strain of this ordinance, and of their preceding Resolutions on the same subject, that the new states, though disabled from tolerating slavery, were still to be considered as having *the same rights*

of sovereignty, freedom, and independence, as the *original states*, and that, though so disabled, they entered, when admitted, into the confederacy, *upon an equal footing with the original states in all respects whatever*. The power of *establishing* slavery was thus denied to be among those rights: And the same degree of protection in the enjoyment of them,—an equal share in all the *real* benefits of the federal constitution,—was given to be understood as the meaning of the phrase last quoted.

Another important maxim was, in the same manner, avowed and determined on this occasion. The state of Virginia, in her act of cession, stipulated that "the French and Canadian inhabitants and other settlers of Kaskaskies, St. Vincents, and the neighbouring villages, who professed themselves citizens of Virginia, should have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties."* The Congress, in establishing in their ordinance, rules of inheritance and testamentary disposition for the Territory, more conformable to the spirit of the American institutions than those which prevailed there, made an exception in favour of the above mentioned settlers, in the following terms: "Saving to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighbouring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property." But the Congress, in decreeing that there should be neither slavery nor involuntary servitude, made no exception in favour of those inhabitants and settlers, on the score of their slaves who were not inconsiderable in number in the proportion; and it is known that, to escape the operation of the ordinance in this respect, many families removed beyond the limits of the Territory. Congress thus rejected the idea of the faculty of retaining the slaves as such, or subjecting their offspring to perpetual bondage, being among "the rights and liberties," or "titles," or law-

* See 1st vol. Laws of the United States, p. 472.

ful "possessions," of the inhabitants and settlers. And the maxim to which I have alluded, as avowed and determined by the ordinance, is this—that the United States acting in a federal or collective capacity, could not admit a right of property in human flesh, where they had jurisdiction, nor understand it to be referred to, in any general stipulation concerning the unmolested enjoyment of rights, titles, liberties, or possessions.

The ordinance so pregnant with principles and views proscriptive of slavery, asserting so absolute a power over the subject in the case of federal territory, had the unanimous sanction, through the votes of delegates in the old Congress, not only of Virginia, but of the two Carolinas, and Georgia. Virginia did not think the conditions which she had imposed in the act of cession, violated by the regulations of the ordinance; her opinion was expressed not only in the votes of her delegates, but soon after, more directly, in an act of her own legislature. On receiving her grant, with the modifications which she had prescribed, Congress asked, by Resolution,* an alteration of the act of cession, as to her particular division of the territory ceded, into different states; adding to the request the following phrase, —"which states shall hereafter become members of the federal Union, and have the same rights of sovereignty, freedom, and independence, as the original states, in conformity with the resolution of Congress of the 10th of October, 1780." After the formation of the ordinance, Virginia passed an act (30th December, 1788) acceding to the request or recommendation of Congress contained in the Resolution; referring particularly to that Resolution; reciting *in extenso*, and especially ratifying the fifth article of the compact of the ordinance,—in which article a change of the division which she had prescribed, was made. She left it to be necessarily implied by this act of confirmation, that she did not consider Congress as having, by the prohibition of slavery in the North West Territory, violated the pledge given in their Resolution of request, that the states to be

* July 7th, 1786.

formed out of the said territory should have *the same rights of sovereignty, freedom, and independence, as the original states.* The request of Congress on the one hand that she would "empower the United States," to make a division different from that which she had traced, and her formal confirmation, on the other, of the arrangement in which that Assembly had departed from her plan, prove a common understanding as to the regularity of the interpretation of all the other parts of their several acts and proceedings in the case. The other southern states, as I shall have occasion to show hereafter, also ratified the ordinance directly; and it was re-enacted by the first Congress under the new constitution.

When communities which had acted and spoken, as I have noted; which had assumed, emphatically, the title of republics; which, after extorting the recognition of their independence, solemnly ascribed their signal triumph to the favour of Heaven propitiated by the sincerity of their declarations, the elevation of their motives, and the justice of their cause,—when *they* combined to establish a government national as well as federal, it could not be, that they would devise a system restricted, in its beneficence, to men of any particular complexion of body; equitable and advantageous only for themselves; securing their freedom and prosperity, but serving to rivet and perpetuate the thraldom of another description of the human race. When *they* entered into a compact of perpetual union and co-operation, they could not intend a partnership merely in military defence; in the culture of tobacco and wheat; in trade and navigation, or in territorial aggrandizement;—a partnership "subservient only to the gross animal existence of a temporary and perishable nature;" but rather one having also higher objects and interests,—universal justice and universal liberty—moral and intellectual perfection* in the utmost extent in which this could be promoted by political

* See Vattel, b. 2. c. 3

arrangements. And, with regard to the negro-slavery with which they were afflicted and stained, if they could not attempt its extinguishment, at least they would not fail to provide against its extension, and would so legislate as to favour to the utmost the end of abolition.

It must have been with impressions of this nature, that the Convention of 1787 appointed to create a federal constitution, entered upon their task. We may collect the fact from the tenor of the preamble to their system, in which the American people collectively are made to appear as the only agents on the occasion, and to propose as their chief ends, the establishment of justice, the promotion of the general welfare, and the perpetuation of the blessings of liberty.

On the subject of the negro-slavery the framers of the constitution, had, no doubt, the same opinions with respect to the quarter to which the guilt of it attached, and the necessity of postponing all attempts at abolition, which I have described as common to the other federal assemblies. They were therefore, equally consoled under the disrepute inseparable from its continuance, and cautious about tampering with its cure. But, we must confess, that an explicit avowal of the principle of abolition was still more required from the Convention, than from the Congress that put forth the declaration of independence; because abolition was now more within the limits of practicability and calculation, and the debt of righteousness to Providence, greatly increased by the issue of the revolutionary struggle, and the career of prosperity opened to the nation.* If some such avowal was not made,—if some concurrence of national circumstances was not designated in the constitution, as the juncture when the attempt at abolition should be begun under the auspices and with the resources of the confederacy—we may presume, however, that the representatives of most of the states desired and urged such a course of proceeding, and only consented to waive it from the inflexi-

* See on this point the inaugural address of General Washington, as President of the United States, to Congress (April 30th 1789) and the answers of the Senate and House of Representatives. Note D.

bility of others of their body. There was more to hope on the subject of abolition, with, than without the national system of Union which they had in view; it could be attempted more safely, and effected more easily, under such a system, although no active power, no control whatever, with regard to the internal economy of the slave holding states in this respect, should be lodged in the new government. None, therefore, was insisted upon; and the whole subject of slavery within the limits of a number of the states, was left under their exclusive cognizance and control respectively.

But, it became necessarily a topic of reference and arrangement in the constitution; and here we shall see, that the framers of this instrument, were not wanting in the sense and views which were becoming in such men, and proper in themselves, and suitable to the occasion. They pronounced the condemnation of the institution of slavery, by abstaining from the use of the word *slave*, when they were called to refer to this class of beings; and substituting for it a term of vague import: They acted as one afflicted with an hereditary leprosy, or any other foul disease of similar origin, would do, in veiling it as far as possible from the eye of the world, though with the consciousness of being free from personal guilt.* They acknowledged by this expedient, its general odium and inherent turpitude, and established a pregnant admonition for the American people and particularly the slave holding states. Their reserve has been interpreted further into a belief that the constitution would survive the canker of slavery, and into the consequent design of excluding from the former, whatever might immediately awaken the recollection of its existence within the jurisdiction of the Republic. Be this as it may, the proceeding argues dispositions on their part every way adverse to the extension of the evil under the auspices of the system which they were forming.

* Mr. Jay, in his letter to the Hon. Elias Boudinot, (17th Nov. 1819) makes the following remarks. "The word *slaves* was avoided, probably on account of the existing toleration of slavery, and its discordancy with the principles of the revolution, and from a consciousness of its being repugnant to some of the positions in the Declaration of Independence."

These dispositions are more directly proved by the tenor of that clause of the constitution which relates to the slave trade, and of which it belongs to my purpose to investigate the true meaning and scope. The clause is as follows —"The *migration* or importation of such persons as any of the states *now existing* shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." "I understand the sense and meaning of this clause," says Mr. Jay, "to be—that the power of Congress, although competent to prohibit such migration *and* importation, was not to be exercised with respect to the *then* existing states, until the year 1808; but that the Congress were at liberty to make such prohibition as to any *new* states, which might *in the mean time* be established; and, further, that from and after that period, they were authorized to make such prohibition as to all the states, whether new or old."

That the power of prohibition, with respect to the original members of the Union, was denied to the federal government until the expiration of twenty years, is a stain upon our national character, which is rendered the deeper by the Resolution to which I have already adverted, of the Congress of 1774, against the further importation of slaves into the thirteen colonies, and by the complaints which some of those colonies had, still earlier, preferred against the British crown on this score. The Congress of 1774 even exceeded what was afterwards deemed the measure of its competency, to arrest the slave trade; the Convention of 1787, with full and undisputed powers to suppress it at once, postponed the suppression for twenty years, showing the national virtue to have been more active and rigid in the crisis of danger, than in the season of security and ease.*

* There is, however, this excuse for the Convention; that most of the states had, themselves, prohibited the slave trade and the importation of slaves. Georgia and South Carolina persisted in receiving them from abroad. See note F.

"It were doubtless to be wished," says Mr. Madison, in the Federalist, "that the power of prohibiting the importation of slaves, had not been postponed until the year 1808, or rather, that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favour of humanity, that a period of twenty years may terminate for ever within these states, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few states which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the Union."

The immediate cause to which Mr. Madison alludes, of this impolitic and sinful restriction upon Congress, is explained by the same authority, in the Report of the debates of the Virginia Convention respecting the Constitution. I will extract the passage, in order that the discredit may fall upon the true culprits.

"The southern states would not have entered into the union of America, without the temporary permission of the slave trade. And if they were excluded from the union, the consequence might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The union in general is not in a worse situation."

"The gentlemen from South Carolina and Georgia argued in this manner:—'We have now liberty to import this species of property, and much of the property now possessed, has been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value, and we would be obliged to go to your markets.' I need not expatiate on this subject. Great as the evil is, a dismemberment of the union would be worse. If those states should disunite from

the other states, for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers."*

The first remark which I shall make in respect to the construction of the clause in question is, that, though the word *persons* is employed, it refers exclusively to negro slaves. This is expressly affirmed by Mr. Jay.† The supposition that it was intended to invest Congress with the power of preventing at any time the emigration of *white freemen* into any of the states, either the old or new, or that it was thought necessary Congress should be empowered to interfere to restrain them from admitting coloured freemen or white malefactors,—involves an absurdity, and has been universally rejected. Some idea of the kind was thrown out by the cavillers at the constitution, at the time it was proposed to the people for adoption, and Mr. Madison alludes to the objection in the following remarks. "Attempts have been made to pervert this clause into an objection against the constitution, by representing it on one side, as a criminal toleration of an illicit practice, and *on another as calculated to prevent voluntary and beneficial emigrations from Europe to America.* I mention these *misconstructions* not with a view to give them an answer, *for they deserve none*, but as specimens of the manner and spirit in which some have thought fit to conduct their opposition to the proposed government."‡

In no other part of the constitution, except in this clause respecting the importation of slaves, are the states mentioned in the peculiar phraseology of—"the states *now* existing." We are entitled to infer that there was an intention of rendering the limitation to the original thirteen, as precise and striking as possible; and of subjecting the new states and all territory which might belong to the union, most emphatically to the control of Congress on this head. The whole text, indeed, bespeaks a compromise in which, on the one hand, the privilege of multiplying the race of slaves within their limits, either by importations from abroad

* P. 322. † See his Letter quoted above. ‡ Federalist.

or domestic migration, is reluctantly yielded for a term to those southern states who made this compliance a *sine qua non* of their accession to the union; while, on the other hand, the power is conceded, by implication, to the federal government, of preventing at once the extension of slavery beyond the limits of the old states—of keeping the territory of the union, and the new states, free from the pestilence; and ultimately, of suppressing altogether the diabolical trade in human flesh, whether *internal* or external.

The various motives which led to the formal recognition of a power in the federal government to prohibit the importation of slaves, are plainly distinguishable. The traffic was acknowledged to be in itself heinous and disgraceful; the subsequent bondage cruel, unjust, dangerous. A moral and enlightened people, jealous of principle and character, as well as watchful of the general peace and safety, would do nothing not exacted by a supreme necessity, that might enlarge the crying evil and sin; would do all that was practicable to prevent its extension; all that might, without injury or strife, conduce to its extinction. The importation of slaves from abroad increased the number of dangerous inmates; it multiplied the objects of injustice and oppression; and in so doing, might lead to the diffusion of the evil over a larger surface where it would, in progress of time, reach the same intensity: it increased the difficulty if it did not wholly take away the possibility, of universal or partial emancipation. These latter considerations had, we are bound to suppose, the greatest weight with the Convention.

By the clause above quoted, the federal government is recognized to have the power of prohibiting at once and for ever, not only the *importation* of slaves from abroad, into the territories and new states, but their *migration*, or removal from the old states into the new or into the territories. The conjecture has been indulged that the Convention employed the words *migration* and *importation* as synonimous. But these words had never been so received either among the proper authorities in language, or in common parlance: neither custom nor etymology would warrant such a use of them. We are not entitled to imagine, that the let-

tered men and distinguished writers who framed the constitution would, where precision was so important, have confounded terms correctly and commonly understood to be of distinct import; or, in the hypothesis that this was not notoriously the case, have fallen into sheer tautology.* If they had intended to vest in Congress no other or further power than that of prohibiting *importation*, they could not have conveyed their meaning more clearly or fully, than by the word *importation* alone.

Moreover, it is an established rule of interpretation, with respect to every instrument of writing, that due force is to be given to every term in it, which has a plain, acknowledged sense, and can be applied with certainty and without difficulty. The term *migration* is of this description. It affords no scope for conjecture or arbitrary comment. It is, indeed, capable of being extended, in its derivative signification, to the act of emigrating, across an ocean for instance, from one quarter of the world to the other; but its common and equally proper acceptation is the act of changing place or domicile in the same country or continent. Now, it is also an established rule of interpretation, that if the subject or matter treated of, will not allow, that the terms of a disposition should be taken in the enlarged sense, we ought to adhere to the most limited sense which the proper signification will admit. This rule is the more imperative where the extensive interpretation would lead to an absurdity. But we have seen that the clause of the constitution refers only to *slaves*, whose removal from abroad to this country, by any other mode than *importation*, could never have been in the contemplation or fancy of the Convention, and would not, of course, have been expressed by any other term. We are then left to understand by the word *migration* in the clause, the transportation or removal of slaves from one state to another, or from a state to a territory. It may

* The constitution, after being fully digested as to the substance, was referred to a committee for the purpose of being freed from all superfluous words. Each phrase was weighed with a view to the utmost precision, by members who were thought especially qualified to decide. I have this fact upon the authority of one of them, and not the least distinguished.

be objected that *migration* implies something of an independent, voluntary act, which cannot properly be predicated of slaves; but we may suppose that the Convention preferred the word on this account: the use of it is in consonance with that of the word *persons*, and belongs to that policy of virtuous shame which sought to shadow our internal condition, in a constitution destined for the study and admiration of the world, and for indefinite duration. At all events, the word migration cannot be treated as null and without meaning; and when we give it interpretation and effect, as we are bound to do—it must be in the direction in which the context, reason, and the *general intention* of the authors point.

After what has been said we can hardly doubt, that this general intention was to keep the territories and new states altogether free from the bane of negro slavery: or, if it should be necessary to permit its existence in any, to prevent all addition to it there, from without. To compass this end, it was indispensable that the federal government should be invested with the power to control the *internal transportation* of slaves—to hinder the introduction of them into the new states from the old. As it cannot be conceived why the faculty should have been reserved to Congress, of prohibiting *at once* the importation or migration of slaves into the territories and new states, unless it were with a view to shut out slavery from them altogether, or prevent its increase,—so it cannot be conceived that, for this purpose, it could have been deemed sufficient, merely to guard against the importation of slaves into them *from abroad*. Most of the territories and new states which the Convention had in view, were *inland*, and slaves could not be imported into them, but through the old states; which last circumstance—owing to the facility of concealing beyond detection, the foreign origin of the slaves introduced, —would render futile any prohibitory regulations as to mere importation. In this way we are furnished with a natural and satisfactory explanation of the intent and uses of the term *migration*.

All must admit that the federal government possesses

the power of suppressing the transportation of slaves, *for sale*, from one state to another, as well as from a state to a territory. The turn of the clause of the Constitution respecting the prohibition of importation, implies the admission of a previous general power in the federal government to that effect. But this general power was understood to arise out of the other expressly given, of regulating commerce with foreign nations.* As the power of regulating commerce "between the several states," is also expressly given, it included in the same manner, that of prohibiting the *commerce* in slaves between those states.

Other reasons besides that of securing the new states and territories from one of the worst of ills, may be suggested for the grant to Congress, of the power of suppressing the internal transportation of slaves for whatever general purpose. The Convention can be supposed to have felt a wish to prevent any occasion being given, for the greater activity of that *internal trading* in human flesh, *the negro-driving*, which is among the most odious and disgraceful incidents of the institution of slavery. They could perceive that, if the removal of slaves to the new states, were not liable to entire suppression, these would form additional lucrative marts serving to incite the traffic just mentioned, and its twin practice—kidnapping. They could not fail, moreover, to be sensible how much the opening and continuance of such vents would, by holding out temptations to cupidity, obstruct that which must have been dear to their hearts—emancipation of individuals in the old states; —how many additional human beings destined, otherwise, to be liberated from their shackles, would be offered as victims upon the new altars raised to remorseless and insatiable avarice.

The Convention must have been desirous, also, that the internal traffic, as it prevailed between the old states, should be liable to suppression or regulation, even at the expiration of twenty years; and it was through the Federal Government alone that they could expect to see this accomplished.

* See Debates in the Virginia Convention, p. 323. Note F.

The restriction upon Congress in this case, for the same term as in that of the prohibition of importation, can be accounted for without difficulty. South Carolina and Georgia who insisted upon it in the one, had the same motive for requiring it in the other. This motive was to retain the faculty of increasing or replenishing their stock of negroes, from every source. Those states were the receptacles of the slaves removed from the others; they were the goals of the negro-driver and kidnapper, and would not consent to the immediate stoppage of any channel of supply. Another operative consideration on this head has been suggested. The price of slaves might be seriously affected by a sudden prohibition of the internal transportation of them; and against such an inconvenience, adequate precautions were to be taken.

Admitting this power to be given by the Constitution, if it had never been exercised or asserted by Congress, it would not on that account, as every constitutional lawyer knows, be the less real, or proper to be exercised. But it has, in fact, been asserted. Witness the following extract from the act of Congress, creating the territory of Orleans. "It shall not be lawful for any person or persons to import or bring into the said territory, from any port or place *within the limits of the United States*, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing, any slave or slaves which shall have been imported since the first day of May, one thousand seven hundred and *ninety-eight*, into any port or place within the limits of the United States, or which may hereafter be so imported from any port or place without the limits of the United States: And no slave or slaves shall, directly or indirectly, be introduced into said territory, *except by* a citizen of the United States, removing into said territory for actual settlement, and being, at the time of such removal, *bona fide owner of such slave or slaves*."

These provisions of the act above mentioned, deserve particular attention. The importation of slaves into the original states was not, and, as we know, could not be, prohibited by Congress until the year 1808. Yet that body prohibited the introduction into the territory of Orleans,

from any port or place within the limits of the United States, of all slaves imported into any of the states since the year one thousand *seven hundred and ninety-eight*. It had, of course, equal power to enact a similar prohibition as to slaves imported since any antecedent date. We find, likewise, that it denied altogether to all but persons of a particular description—*citizens of the United States* having particular views—the faculty of introducing slaves, from any quarter, into the territory of Orleans; thereby asserting in theory an absolute control over the matter of internal transportation to whatever domain of the Union. It expressly interdicted the internal traffic, negro trading and driving, in relation to a territory where it allowed slavery itself to continue. Seeing that the Congress of 1804, sought to destroy the detestable traffic, as regarded Louisiana, we may the more readily believe that the federal convention of 1787, wished to have it destroyed as to Georgia and South Carolina; or rather, abolished universally.

In proof of the intention of the Convention to invest Congress with a power over internal transportation, and to exclude slavery altogether from the new states, we have, not only the considerations which I have urged, but direct testimony of the most decisive character. In the letter of Mr. Jay above cited, this venerable person, one of the authors of the Federalist, says—"To me the constitutional authority of the Congress, to prohibit the migration *and* importation of slaves into any of the states, does not appear questionable." The celebrated James Wilson, who passed from the Federal Convention, after having acted a conspicuous part there, to the Convention of Pennsylvania, assembled to decide on the adoption or rejection of the constitution, held this language in the latter body. "It is with much satisfaction I view this power in the general government, whereby they may lay an interdiction, after the year 1808, on this reproachful slave trade; but an immediate advantage is also obtained, for a tax or duty may be inforced on such importation, not exceeding ten dollars for each person. It was all that could be obtained; I am sorry it was no more; but from this I think there is reason to hope, that yet a few years,

and it will be prohibited altogether; and, in the mean time, the new states which are to be formed, will be under the control of Congress in this particular; *and slaves will never be introduced amongst them.*"*

If it be beyond question, that the Convention sought to prevent the Union from being made subservient to the diffusion and confirmation of slavery, it is no less certain that they regarded the constitution which they framed, as likely to prove ministerial, or at least highly propitious to universal abolition. To render it so, as far as possible, consistently with the attainment of the indispensable object of Union, was a manifold duty of which, as I have intimated, they could not but be fully aware. For that which is demonstrable *a priori*, we have also, as in the case treated in the last paragraph, satisfactory external evidence. Judge Wilson, on the same occasion on which he used the language already quoted from him, expressed himself thus: "I consider this power given to Congress to prohibit the importation of slaves, as laying the foundation *for banishing slavery out of this country;* and though the period is more distant than I could wish, yet it will produce the same kind, gradual change, which was pursued in Pennsylvania." In another of the debates of the Pennsylvania convention, the same high authority spoke in a yet more sanguine, and positive strain. "I confess that I little thought that this part of the federal system (that which relates to the prohibition of the migration and importation of slaves) would be excepted to. I am sorry that it could be extended no further; but so far as it operates, it presents us with the pleasing prospect, that the rights of mankind will be acknowledged and established throughout the Union. If there was no other lovely feature in the constitution, but this one, it would diffuse a beauty over its whole countenance. Yet the lapse of a few years! and Congress will have power to exterminate slavery from within our borders.† How would

* "Debates of the Convention of the State of Pennsylvania on the Constitution. Taken accurately in short-hand by Thomas Lloyd."

† He perhaps expected that, at the expiration of the twenty years, Congress would be formally invested by an amendment of the constitution, with a direct power to this effect.

such a prospect expand the breast of a benevolent and philanthropic European? Would he cavil at an expression? catch at a phrase?" &c.

In Virginia, whose delegates to the federal convention were among the ablest, most diligent, and useful labourers in the formation and establishment of the constitution—it was particularly urged against the new system by those who wished for its rejection, that it had a latent competency, or irresistible tendency, to the emancipation of their slaves. And we find governor Randolph, in the debates of the Virginia convention, holding this remarkable language: "That honourable gentleman (Patrick Henry) and some others, have insisted that the abolition of slavery will result from this constitution, and at the same time have complained that, (by the postponement of the prohibition of the slave trade) it encourages the continuation of slavery. The inconsistency proves in some degree the futility of their arguments. But, if it be not conclusive to satisfy the committee that there is no danger of enfranchisement taking place, I beg leave to refer them to the paper itself. I hope that there is no one here, who, considering the subject in the calm light of philosophy, will advance *an objection dishonourable to Virginia;* that at the moment they are securing the rights of their citizens, an objection will not be started, that there is a spark of hope, that those unfortunate men now held in bondage, *may*, by the operation of the general government, be made *free*."

The generous sentiment here conveyed by Governor Randolph, was, we know, common to the Virginia delegation in the federal convention, and to others of the most distinguished men of that state: the abolition of slavery was, with them, a favourite object;* and they relished the new scheme of union the more, from the facilities which it might afford—from its studied conduciveness—to that end. Such of them as thought this a matter to be left to the option and exclusive legislation of the states, were easy, however, because they saw that there was no power of attempting or effecting it, lodged in the federal government,

* See Note G.

by the Constitution;—that from the mode of representation and taxation, Congress could not, as had been objected, lay such a tax as would amount to manumission;—that the several states were for ever secured, both by the tenor of the instrument and general circumstances, from any interference or dictation in their internal concerns in this matter, on the part of the federal government, though it would possess an unlimited power, over whatever was *exterior*, as to slavery. Those of the southern politicians who were averse from abolition at any period, or by any mode, had indeed cause to look upon the new system with a suspicious eye: for, it no where sanctions the idea of a *right* of property in human beings; it does not recognize slavery as an object of direct protection.

With what reluctance the major part of its framers submitted to impose the twenty years restriction upon it as to the slave trade, I have sufficiently indicated. They regarded as a *concession* even the following clause of the Constitution. "No person *held to service or labour* in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due."* Yet, the continuance of slavery in those of the original states who might choose to maintain it, being submitted to,—the matter of abolition being left entirely with them,—an arrangement like the one here quoted, followed of course, and was required by the interests of the whole confederacy. Antecedently, that is, from the date of the Revolution, if a slave eloped to any of the states where abolition had been declared, he was emancipated by their laws, "the laws of the states," said Mr. Madison,† "being uncharitable to one another in this respect." Such a condition of things could not have been allowed to continue, without affecting too

* It should be noted that, by this clause, it is only a *state* which is bound, under the Constitution, to deliver up fugitives of the description mentioned. The authorities of a territory would be at liberty to refuse, without a special law of the Federal government prescribing the contrary, such as that of the 12th February, 1793.

† Debates of the Virginia Convention.

sensibly the internal economy of the slave-holding states, and endangering the peace and cordiality of the Union. So, with regard to that clause in the Constitution which pledges the Union "to protect each of the states, on application of the legislature or of the executive, (when the legislature cannot be convened) against *domestic violence;*" within which phrase insurrections of the negroes are necessarily, and were, no doubt, specially intended to be, included.* Here, nothing more is done, than was obviously exacted by the common welfare. Such insurrections, in menacing the existence of the slave-holding states, menaced that of the Union, and the prosperity of its other parts. Thus, whatever countenance can be said to be given to slavery by these clauses, whatever recognition made of it,—is but collateral and negative; indicative merely of the understanding that the slave-holding states were to suffer no molestation or detriment in their internal system; and of the inevitable policy of guarding the Union itself from the mischiefs to which it was exposed from that system.

There is yet another reference to the slave population in the Constitution, which is far from invalidating my theory, and in which the framers look at the monster, askance, and do not seem to acknowledge its nature or existence. I will be understood to mean that clause which apportions "representation and *direct* taxation among the several states,†

* Mr. Madison, in justifying this clause, in the Federalist, writes thus. "May it not happen, in fine, that the minority of *citizens* may become a majority of *persons*, by the accession of alien residents, of a casual concourse of adventurers, or of those whom the constitution of the state has not admitted to the rights of suffrage? I take no notice of an unhappy species of population abounding in some of the states, who, during the calm of regular government, *are sunk below the level of men;* but who, in the tempestuous scenes of civil violence, *may emerge into the human character*, and give a superiority of strength to any party with which they may associate themselves."

† The text of the Constitution is—"Representatives and direct taxes shall be apportioned among the several states *which may be included within this Union.*" This mode of expression would seem to embrace all the states in which slavery should be permitted, that might at any time be included in the Union; but the Convention had in view, in fact, only the original slave-holding states, whose concurrence in the Constitution was extremely doubtful. The new federal system was to go into operation, when ratified by nine states. The ratification of eleven was obtained in the first instance, with the greatest difficulty. *North*

according to their respective numbers to be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other *persons*," that is *slaves*. This arrangement was also a matter of compromise; the allowing three-fifths of the slaves to be virtually represented, was a concession made to the slave-holding states, to win them to union; to reconcile them to the apportionment of direct taxes according to numbers; and to the power vested in Congress over navigation and commerce, from which power those states were averse, but of which they have since made the most extensive use, and in which they have had most reason to rejoice. The concession was at once felt and proclaimed to be great, by their delegates; it was acknowledged to be nearly so much positive gain.* The nature and estimation of it, I cannot develope better, than by adopting a representation on the subject which has recently been given to us, with the sanction of the highest authority,—of a distinguished member of the Federal Convention, who not only explains, but bears witness. "The present House of Representatives," says Mr. King,† "consists of 181 members, which are apportioned among the states in a ratio of one representative for every thirty-five thousand federal numbers, which are ascertained by adding to the whole number of free persons, three-fifths of the slaves. According to the last census, the whole number of slaves within the United States was 1,191,364,

Carolina, Rhode Island, and *New York* refused "Neither the intrinsic merits of the scheme of government which was thus offered to the American people for their acceptance," says Judge Marshall in his life of Washington, "nor the imposing weight of character by which it was supported, gave assurance to its advocates that it would be ultimately received. To decide the interesting question which agitated a continent, the best talents of the several states were assembled (1788) in their respective conventions. So balanced were parties in some of them, that even after the subject had been discussed for a considerable time, the fate of the Constitution could scarcely be conjectured; and so small, in many instances, was the majority in its favour, as to afford strong ground for the opinion, that had the influence of character been removed, the intrinsic merits of the instrument would not have secured its adoption."

* See the Addresses of the Southern Members of the Convention to their constituents.

† Substance of two speeches delivered in the Senate of the United States

which entitle the states possessing the same, to twenty representatives, and twenty presidential electors more than they would be entitled to, were the slaves excluded. By the last census, Virginia contained 582,104 free persons, and 392,518 slaves. In any of the states where slavery is excluded, 582,104 free persons would be entitled to elect only sixteen representatives; while in Virginia, 582,104 free persons, by the addition of three-fifths of her slaves, become entitled to elect, and do in fact elect, twenty-three representatives, being seven additional ones on account of her slaves. Thus, while 35,000 free persons are requisite to elect one representative in a state where slavery is prohibited; 25,559 free persons in Virginia, may and do elect a representative—so that five free persons in Virginia, have as much power in the choice of presidential electors, as seven free persons in any of the states in which slavery does not exist."

"This inequality in the apportionment of representatives was not misunderstood at the adoption of the constitution—but as no one anticipated the fact that the whole of the revenue of the United States would be derived from indirect taxes, (which cannot be supposed to spread themselves over the several states according to the rule for the apportionment of direct taxes,) it was believed that a part of the contribution to the common treasury would be apportioned among the states by the rule for the apportionment of representatives.—The states in which slavery is prohibited, ultimately, though with reluctance, acquiesced in the disproportionate number of representatives and electors that was secured to the slave-holding states.—The concession was, at the time, believed to be a great one, and has proved to have been the greatest which was made to secure the adoption of the Constitution."

"Great, however, as this concession was, it was definite, and its full extent was comprehended. It was a settlement between the original thirteen states. The considerations arising out of their actual condition, their past connexion, and the obligation which all felt to promote a reformation in the Federal Government, were peculiar to the time and

to the parties; and are not applicable to the new states, which Congress may now be willing to admit into the Union."

The allegations of Mr. King are all-sufficient; but, independently of them, the simple exposition of the case would shew, that it could not have been the intention of those who conceded, nor the expectation of those who acquired so great an advantage, that it should be communicated beyond the original parties. This certainly is a case in which we must apply the rules of interpretation—that the known reason of a disposition should regulate its application; and that an intention is always to be presumed contrary to the one which would lead to a subversion of justice and equity. Were we to assume that, in the article in question, of the constitution, slaves were referred to in the light of property alone, the dispositions of that article would appear still more unequal and onerous for the non slave-holding states. This point is made abundantly clear in the following observations of the eminent statesman just named.

" The rule for apportionment of taxes is not, necessarily, the most equitable rule for the apportionment of representatives among the states; property must not be disregarded in the composition of the first rule, but frequently is overlooked in the establishment of the second. A rule which might be approved in respect to taxes, would be disapproved in respect to representatives: one individual possessing twice as much property as another might be required to pay double the taxes of such other; but no man has two votes to another's one; rich or poor each has but a single vote in the choice of representatives."

" If three-fifth of the slaves are virtually represented, or their owners obtain a disproportionate power in legislation, and in the appointment of the President of the United States, why should not other property be virtually represented, and its owners obtain a like power in legislation, and in the choice of the President. Property is not confined to slaves, but exists in houses, stores, ships, capital in trade and manufactures. To secure to the owner of property in slaves greater political power than is allowed to the owners

of other and equivalent property, seems to be contrary to our theory of the equality of personal rights, inasmuch as the citizens of some states thereby become entitled to other and greater political power, than the citizens of other states."

"The equality of rights, which includes an equality of burdens, is a vital principle in our theory of government, and its jealous preservation is the best security of public and individual freedom; the departure from this principle in the disproportionate power and influence, allowed to the slave-holding states, was a necessary sacrifice to the establishment of the Constitution. The effect of this concession has been obvious in the preponderance which it has given to the slave-holding states, over the other states. Nevertheless, it is an ancient settlement, and faith and honour stand pledged not to disturb it. But the extension of this proportionate power to the new states would be unjust and odious."

Upon the face of the Constitution, however, it would not appear, that the slaves were referred to at all in the light of property. The comprehension of them within the rule of apportionment as to representatives and taxes, does emphatically hold them forth as *persons*, in contradistinction to property. Mr Madison, in treating of this arrangement, in the Federalist (No. 54), confirms my general doctrine. "Let," he says, "the compromising expedient of the Constitution be adopted, which regards the slaves as *inhabitants*, but as debased by servitude below the equal level of free inhabitants; *which regards the slave as divested of two-fifths of the man.*"

I would not be thought to deny that the slaves were, *by postulation*, received on all sides as property, in the discussions and internal adjustments of the convention; but what I would insist upon is, that the idea is not tangible in the Constitution; and the *moral* of the fact that the framers thus studiously withheld it from that instrument, is strengthened by the admission that they acted upon it among themselves in their deliberations. They intended that it should not operate further than it had done in the private compromise. It was discarded, with a sort of shame and disgust;

as the foul material would be from the pure and wholesome liquor, to the manufacture of which it had been essential as an instrument.

A descendible property from father to son, of the human being and all his offspring in perpetuity, was what, *as a principle*, the majority of the framers of the constitution were more ready to consign formally to execration, than to sanction or shelter in any manner.* They believed it to be utterly repugnant to the laws of God, to the rights and destinies of human nature, and to the welfare of society; and as a practice or institution they knew it to be capable of no defence but that of necessity. They could hardly have thought of giving it countenance or diffusion, while, in the same act, they proscribed bills of attainder, laws working *corruption of blood*, or forfeiture beyond the life of the person attainted. All of them were aware of the oppressive, guilty manner in which our negro slavery commenced; of the cruel means necessary to enforce its continuance, and of the mischiefs and dangers incident to its increase.† We should dishonour and slander them, in imputing to them any other intention than that of confining it to the narrowest limits. The utmost that can be said of the constitution on this point, is that it *tolerates* slavery in the old states. To argue that it therefore permits its extension elsewhere, is surely bad logic. The Convention can be supposed to have tolerated in the old states what they deemed a *great political and moral evil*, only because they had no alternative, and because it was inevitable there. They cannot in decency or reason, be supposed to have meant to authorize it in cases in which this proceeding was not unavoidable, and in parts of the American territory whence it could, by any possibility, be excluded.

If the spirit and drift of the constitution, on this subject, be such as I have represented them to be, the federal government has, properly, no power to permit slavery in a territory of the Union: if slavery be that iniquity and evil which reason, experience, and authority concur in pronouncing it, the federal government has no moral competency to

* Note H. † Note I

permit it there, unless the toleration of it be exacted by the probability of its abolition producing a greater degree of injustice and mischief. Slaves cannot be legally held in any such territory, but by virtue of a positive law of the federal government. *Slavery could find no shelter under the constitution.* The courts of justice, in the absence of such a law, would be obliged to declare and protect the freedom of the negro who should choose to withdraw from bondage, and refer to them the decision of his rights. The doctrine laid down by Lord Mansfield in the case of the negro Somerset in England, would be as applicable and ought to be as efficacious here, in the one under consideration. " The state of slavery is of such a nature, that it is incapable of being now introduced by courts of justice upon mere reasoning, or inferences from any principles natural or political; it must take its rise from *positive law;* the origin of it can in no country or age be traced back to any other source. A case so odious as the condition of slaves must be taken strictly.'

SECTION II.

HAVING, as I think, fully ascertained, that the spirit and tenor of the Federal Constitution authorize and require in general, the exclusion of slavery from the Territories and new States, I will proceed to examine *the practice* of the Federal Government on the subject; bringing into view, however, in the first place, two comprehensive powers with which it is connected. These powers are conveyed in the following clauses of the Constitution:—"The Congress shall have power to dispose of, and make all needful rules and regulations respecting the Territory or other property belonging to the United States."—"New States *may* be admitted by Congress into the Union."

In all the political confederations which have existed, of a character any way similar to our own, an absolute control over the common territory has been vested in the common government. It resulted with us, as in every other instance, from the very nature of the case. The subject of the existence or establishment of slavery in the territories belonging to the Union, necessarily fell within the discretion committed to Congress, as to the administration of their concerns; the Convention not having excepted it out of the general discretion, or reserved it for the states. If there had been an intention of doing either, the assumption of jurisdiction with respect to it, by the Congress of 1787, in their ordinance concerning the North West Territory, would have induced the Convention to express that intention positively. This ordinance was published two months before the constitution was completed. But, on this point, nothing need be added to the exposition in Mr. King's speeches. "The power to make all needful regulations includes the power to determine what regulations are needful; and if a regulation prohibiting slavery within any Territory of the United States, be, as it has been, deemed needful, Congress possess the power to make the same; and moreover to pass all laws necessary to carry this power into execution."

The article of the constitution which provides that "new states *may* be admitted by Congress into the Union," gives, like the other concerning the administration of the territories, an unlimited discretion It is left to the option of Congress to admit or not to admit, and to decide as to the time, terms, and circumstances of admission. There is no restriction; and this arrangement is a kind of corollary to the indefinite power of legislation over the Territories. The authority to admit or reject at pl asure involves as concentric, that of prescribing terms of admission*—such, it being understood, as do not place the new state at variance in its institutions or condition, with the spirit and demands of the federal constitution. To these and to the la s of morality, there is an implied subjecti n in Congress, as to the exercise of whatever power is given to it by the Constitution. Thus, it could not make the ESTABLISHMENT of slavery a term of admission. The Constitution nowhere provides that the *rejection* of slavery shall not be imposed as such; and if the framers had intended slavery to be an exception on this score, they would have expressly reserved it, after seeing its perpetual abolition prescribed by the ordinance of 1787, to all the states which might be formed out of the North West Territory.

There could be no external reason for excepting the prohibition of slavery from the list of lawful conditions, other than this—that the power of establishing it was an indefeasible right of sovereignty, more sacred and vital than the power to coin money, to make war, to lay taxes, or any of the other great attributes which we find surrendered to the federal government in the constitution, or required to be relinquished in the acts of Congress creating the new states! To establish slavery, to tolerate it even, without necessity, amounts to the perpetration of a crime, and a mischief; which

* *Cujus est dare, ejus est disponere* is the well known maxim of the common law, as well as of general jurisprudence. All the political confederations whether of ancient or modern times, in admitting new members, exercised the necessary right of prescribing terms. Mr Madison notices, in the Federalist (No. 18), that "when Lacedemon was brought into the Achæan league, it was attended with the abolition of the institutions and laws of Lycurgus, and an adoption of those of the Achæans."

has never been understood to be matter of right for any moral agent; and such is a state.* Reason would teach that if there be any incapacity, under which Congress could require a state to place itself, as a condition of admission to this political family, it would be that of organizing within its bosom a permanent violation of human rights and divine law; an institution of the most unsightly, odious, and pernicious character, in the disgrace and disadvantage of which all the Confederacy must share. Could we doubt the power of Congress, under this clause of the Constitution, to require of a state disposed and prepared to cherish, and to entail upon its population, some loathsome and virulent epidemic, menacing to its neighbourhood and reproachful to the whole American people—that it would for ever renounce the nuisance on entering into the Union? If Canada, on the supposition that she were free to regulate her own destinies, should solicit admission; presenting herself, however, with an established religion and a system of *villeinage*—would Congress have no alternative but that of rejecting her altogether, or admitting her with those institutions, which are nowhere expressly interdicted by the Constitution to a member of our confederacy? In fact, it is abundantly evident, both from the text of the Constitution and the reason of the case, that the Federal Government is not only competent but bound, to obtain, previously to exercising the power of admitting a new State, every such modification of its being, as, without interfering with any provision of the Constitution, shall render it a more safe, exemplary, and efficient member of the Union.

The mode which has been adopted in some quarters, of arguing against the existence of this power of imposing conditions on new States, by supposing the gross abuse of it, will not succeed with any sound intellect. Abuses are incident to every trust of which a beneficial use can be made. "In every political institution," says the Federalist,† "a power to advance the public happiness, involves a discretion which may be misapplied and abused. In all cases where power is to be conferred, the point first to be decided is, whether

* See note J. † No. 41.

such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible, against a perversion of the power to the public detriment." This is done, as to the power in question, in the very tenor and dispositions of the Constitution, by which Congress must necessarily be limited in the exercise of it. The proposition to a new state, of terms inconsistent with the palpable aims or specific injunctions of the constitution—the refusal to impart the *real* rights and benefits for which it stipulates—will never be hazarded, as success in the attempt would obviously be hopeless. To use the language employed by General Hamilton with respect to another supposed irregularity,—"an experiment of this nature would always be dangerous in the face of a Constitution in any way competent to its own defence, and of a people enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority." On this point of the objections raised in this instance, on the ground of possible abuse, I need say nothing more than is contained in the following passage of the Federalist.*

"The moment we launch into conjectures about the usurpation of the Federal Government, we get into an unfathomable abyss, and fairly put ourselves out of the reach of all reasoning. Imagination may range at pleasure, till it gets bewildered amidst the labyrinths of an enchanted castle, and knows not on which side to turn to escape from the apparitions which itself has raised. Whatever may be the limits, or modifications of the powers of the Union, it is easy to imagine an endless train of possible dangers; and by indulging an excess of jealousy and timidity, we may bring ourselves to a state of absolute scepticism and irresolution. I repeat here what I have observed in substance in another place, that all observations, founded upon the danger of usurpation, ought to be referred to the composition and structure of the government, not to the nature and extent of its powers. The state governments, by their original constitutions, are invested with complete sovereignty. In what

* No. 31.

does our security consist against usurpations from that quarter? Doubtless in the manner of their formation, and in a due dependance of those who are to administer them upon the people. If the proposed construction of the Federal Government be found, upon an impartial examination of it, to be such as to afford, to a proper extent, the same species of security, all apprehensions on the score of usurpation ought to be discarded."

The *practice* of the Federal Government has been in conformity with the doctrine maintained in my first Section, and has established it, as far as invariable practice can be supposed to furnish the true interpretation and direct the application, of any part of the Constitution. The ordinance of 1787, respecting the North Western Territory, exemplifies it throughout. And *this ordinance is to be quoted as the work of the present Federal Government.* It was in the eye and intendment of the Convention, when they gave the general power to admit new States; it was *formally re-enacted* by the first Congress under the Constitution, composed in great part of the framers of that Constitution. *It is referred to as the basis of every act of the present government organizing a Territory or creating a State.* The preamble of the act just mentioned, of the first Congress (approved August 7, 1789) deserves particularly to be noticed as to my subject. It is of this tenor:—"Whereas, in order that the ordinance of the United States in Congress assembled, for the government of the Territory North West of the River Ohio, may continue to have full effect, it is requisite that certain provisions should be made, *so as to adapt the same to the present Constitution of the United States.*" Now, the provisions which follow, do not touch the articles of compact imposed in the ordinance; *that prescribing the abolition of slavery included:* and hence, we have the solemn opinion of Congress, that an act (which it made its own) imposing this and other material restrictions upon new States, was still "*adapted to the constitution.*" "There is no recollection," says Mr. King "of an opposition from any of the Southern States to the act of confirmation passed by the first Congress."

In the act of Congress (approved April 30, 1802) "to enable the people of the Eastern Division of the Territory North West of the Ohio, to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states," it is prescribed as a condition that "the constitution and state government shall be republican and not repugnant to the ordinance of 1787:" and the first section of the act declares that the state when formed shall be admitted into the Union, "*upon the same footing with the original states in all respects whatever.*" The act (approved April 19, 1816) to enable the people of the Indiana Territory to form a constitution and state government, employs the same formule as to the footing on which the new state would be admitted, and imposes also a perfect conformity to the ordinance of 1787, "excepting only so much of the articles of the said ordinance as relate to the boundaries of the states to be formed North West of the Ohio." The making an exception more pointedly ratifies the conditions which remained. —The act to enable the Territory of Illinois to form a constitution, &c. and providing for its admission into the Union, also requires that the constitution shall not be repugnant to the ordinance; and the Resolution of Congress for the admission of the state of Illinois declares it to be admitted "on an equal footing with the original states in all respects whatever." In all the acts concerning the states formed out of the Territory North West of the Ohio, besides the restrictions laid upon them by the reference to the ordinance, there are others directly imposed, affecting territorial rights, and having no relation to any requisition of the constitution.

Thus, in the case of three states, restrictions of this nature were imposed, *especially the perpetual prohibition of slavery*, while in the same breath it was declared, that the states were to be admitted into the Union upon an equal footing with the original states in all respects whatever. And we do not find that any incongruity was ever suspected or alleged to exist between this declaration, and the clauses of the acts which prescribed the restrictions; or, that a com-

plaint was ever preferred, in or out of Congress, of an infringement of the rights, liberties, or independence of the states of Ohio, Indiana, and Illinois. The people of them never discovered that they had an indefeasible right to establish hereditary servitude.* The act of Congress admitting the last of them, was passed as late as April 18, 1818, with the approbation and concurrence of a number of the legislators who compose the present Congress.

Besides the new states of which I have spoken, six others have been admitted into the Union—Vermont, Kentucky, Tennessee, Louisiana, Mississippi, and Alabama. As to Vermont, since slavery had never existed there and her laws proscribed it, no precaution was necessary. Kentucky was explored and settled by Virginians; formed a district of Virginia during the revolutionary war, and continued such at the adoption of the Federal Constitution. With respect to the negro slavery which prevailed in Kentucky, it was therefore to be considered as properly no more within the reach of the Federal government at any time, than that of Virginia. In December 1789, Virginia erected the District of Kentucky into an independent state, and in February 1791, Congress passed an act declaring that it should be admitted into the Union on the first of June 1792. No terms whatever were made by Congress; but it is to be noted that Virginia in erecting the district into "an independent state," did impose restrictions upon its sovereignty, which are called in the act "terms and conditions."†

Tennessee was formed out of territory ceded to the Federal Government in December 1789, by the state of North Carolina, and was privileged for the same reason as Kentucky, from molestation on the score of negro slavery. North Carolina attached various conditions to her cession, and among those which we read in the deed is the following: "That the territory so ceded shall be laid out and formed into a state or states, the inhabitants of which shall enjoy all the privileges, benefits, and advantages, set forth

* These states all recognize, in the preamble of their respective constitutions, the binding authority of the ordinance of 1787, in all its parts.

† See her "Revised Code."

in the ordinance of the late Congress for the government of the Western Territory of the United States, &c." The deed of cession then proceeds thus—" the Congress of the United States, on accepting the cession of territory made by virtue of this act, under the express conditions hereby specified, shall at the same time assume the government of the said ceded territory which they shall execute in a manner similar to that which they support in the territory west of the Ohio: *Provided always, That no regulation made or to be made shall tend to emancipate slaves.*" With regard to Tennessee therefore, Congress, besides labouring under a previous, implied incapacity to suppress slavery there, was expressly disabled from so doing. It is not to be overlooked, that North Carolina, in the extracts which I have just made, recognizes and adopts the ordinance of 1787.*

The states of Mississippi and Alabama were formed out of territory ceded to the United States by Georgia and South Carolina. The " Articles of agreement and cession between the United States and the state of Georgia"† contain the following stipulation. " The territory thus ceded, shall form a state, and be admitted as such into the Union, as soon as it shall contain sixty thousand free inhabitants, or at an earlier period if Congress shall think it expedient, on the same *conditions and restrictions*, with the same privileges and in the same manner, *as is provided in the ordinance of Congress of the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the Western Territory of the United States, which ordinance shall in all its parts, extend to the territory contained in the present act of cession, that article only excepted which forbids slavery.*"

In April 1798, Congress passed an act authorizing the establishment of a government in the territory in question, to be styled the Mississippi Territory. The President of the United States was authorized by this act " to establish therein a government in all respects similar to that exercised in the territory north-west of the Ohio, excepting and

* Tennessee does the same in the preamble to her Constitution.

† 24th April, 1802.

excluding the last article (that respecting slavery) of the ordinance made for the government thereof by the Congress in 1787." In the same act, the ordinance is again referred to as the charter of the rights, privileges, and advantages of the new territory. It is also provided that "no slave or slaves shall be brought into the said territory from any port or place without the limits of the United States." In May 1812, the portion of West Florida lying east of Pearl River, west of the Perdido, and south of the 31st degree of latitude, was annexed by act of Congress, to the Mississippi Territory. In the month of March 1817, this territory was, (the consent of Georgia being first asked and obtained,) divided into two parts.

In the month and year last mentioned, Congress passed an act authorizing "the inhabitants of the western part of the Mississippi Territory to form for themselves a Constitution and State Government," and declaring that the said state when formed, should be admitted into the Union "upon the same footing with the original states in all respects whatever." The restrictions imposed upon the new state are various, and in the margin of the act are entitled "Reservations and *Conditions* of admission into the Union." The first of them is, that the constitution and state government should not be repugnant to the principles of the ordinance of 1787 for the North West Territory, (the sixth article being waived) or to those of the Constitution of the United States. As there are several principles established in the ordinance, which are not prescribed in the Constitution, Congress in this case as well as in the others, asserted a full discretion in dictating any terms within the spirit of that instrument. Mississippi was prohibited to violate religious liberty, or invade the rights and liberties of the Indian, which, not being expressly forbidden in the Constitution, must be considered quite as precious and integral a right of state sovereignty as that of enslaving the offspring of the negro, born as free under the law of nature *and the Constitution*, as the Indian. In the same month, (March 3d, 1817) Congress erected the eastern part of the Mississippi Territory into a separate territory under the name of Ala-

bama, and established for it a government the same as that of the former, and modelled upon the ordinance of 1787. The resolution of Congress (December 10th, 1817) for admitting the state of Mississippi into the Union, "upon an equal footing with the original states in all respects whatever," goes upon the ground, that the people of the said state, had formed for themselves a constitution and state government, republican and *in conformity to the principles of the articles of compact of the ordinance of* 1787."

In the month of March 1819, an act was passed to enable the people of Alabama to form a constitution and state government, and for its admission as a state into the Union. The same language was employed in this instance as in the preceding, and it was required, among various conditions, that the constitution and state government should be "not repugnant to the principles of the ordinance of 1787; as far as the same had been extended to the territory by the articles of agreement between the United States, and the state of Georgia."

We have thus passed in review four states, which were left by Congress to exercise their own will as to the toleration of slavery. We have seen that in the case of all of them, that body was specially restrained; and in fact, stood towards them, as to this matter, in the same relation as towards the original states out of which they were carved. The territories which Georgia, South Carolina, and North Carolina consented to subject to the jurisdiction of Congress, would not have been ceded but upon the condition exacted —that slavery should be permitted to continue in them; and this institution would, undoubtedly, have continued in the same manner, had the United States refused to accept the cession on such terms. Nothing, therefore, would have been gained by this course, for justice and humanity. A simple view of the map will show to any eye, how deeply concerned the ceding states were, in keeping things upon the old footing as to slavery; and that Congress, in acquiescing, pursued a policy almost indispensable for their security. The patriotic member of the House of Representatives,* who, last

* Mr. Tallmadge.

year, proposed the restriction tending to prevent the establishment of slavery beyond the Mississippi, mentioned that he had abstained from urging its prohibition in the Alabama territory, with a view to the safety of the white population of the adjoining states; because, surrounded as that territory was by slave-holding states, and with only imaginary lines of division, the intercourse between slaves and free blacks could not be prevented, and a servile war might be the result.

From the foregoing details, it is clear that, so far, nothing can be said to have been done by the federal government, to invalidate the force of the precedent established by the exclusion of slavery from the states north-west of the Ohio, or to countenance its extension. There was no option in any one of the cases last enumerated.

But we have yet another new state, Louisiana, the circumstances of whose probation and admission require to be particularly noticed. They will attest that Congress has followed the rule of action which I have suggested as the constitutional and obligatory one—that of effecting every modification in the institutions and being of a new state, adapted to render it a more reputable, efficient, and homogeneous member of the Union. The vast province of which the state in question formed only a small part, was ceded to the United States, "in full sovereignty" by France, on the thirtieth day of April, eighteen hundred and three. Its situation, when the United States took possession of it in 1804, is thus accurately represented by Mr. King. "It was estimated to contain 50,000 white inhahitants, 40,000 slaves, and 2000 free persons of colour. More than four-fifths of the whites, and all the slaves, except about 1300, inhabited New Orleans and the adjacent territory: the residue, consisting of less than 10,000 whites, and about 1300 slaves, were dispersed throughout the country now included in the Arkansas and Missouri territories. The greater part of the 1300 slaves were in the Missouri territory."

The treaty of cession contained a stipulation in favour of the inhabitants, in the following terms. "The inhabitants of the ceded territories shall be incorporated in the union of

the United States, and admitted as soon as possible, *according to the principles of the Federal Constitution*, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." Of this article Mr. King remarks, that, "though it wants precision, its meaning cannot be misunderstood." "It constitutes," he says, "a stipulation, by which the United States engage that the inhabitants of Louisiana should be formed into a state or states, and as soon as the provisions of the constitution permit, that they should be admitted as new states into the Union on the footing of the other states; and before such admission, and during their territorial government, that they should be maintained and protected by Congress, in the enjoyment of their liberty, property, and religion."

Another distinguished federal representative from New York—whose zeal and exertions in the cause of the national honour and interests cannot be too much applauded—gave a different interpretation to the article, not unworthy of attention: His language was as follows—"The inhabitants of the ceded territory, when transferred from the French republic, would have stood, in regard to the United States as aliens. The object of the article, doubtless, was to provide for their admission to the rights of citizens, and their incorporation into the American family. The treaty makes no provision for the erection of new states in the ceded territory. This was a question of national policy properly reserved for the decision of those to whom the constitution had committed the power. The framers of the treaty well knew that the president and senate could not bind Congress to admit new states into the Union." There is much plausibility in the purport of this exposition. It is certain that the extension to the inhabitants, of the protection and advantages of the Federal Constitution—of the provisions of the ordinance of 1787—would have satisfied the mere terms of the article; and we know how strenuously it has been contended, by several of those legislators

who are now eager for the unconditional admission of the Missouri Territory into the Union, that the treaty-making power is not of virtue to affect the exercise of a great power of Congress.* At all events, the tenor of the article cannot be thought to impose more positive obligations and restrictions upon the Federal Government, than the pact of the old Congress with the state of Virginia, in respect to the countries north-west of the Ohio ceded by her to the Union—that those countries should be settled and formed into distinct republican states, which should become members of the Federal Union, and have *the same rights of sovereignty, freedom, and independence as the other states.*" It was not thought incompatible with the last of these stipulations, to prohibit slavery for ever in those countries; nor with the first, to ordain, that "they should be admitted to a share in the federal councils" only "at as early periods as might be *consistent with the general interests of the confederacy.*"

To proceed to the legislation of the Federal Government, as to the ceded province. In the month of March 1804, Congress passed an act "erecting Louisiana into two territories and providing for the temporary government thereof." That portion of the province which is now the state of Louisiana, was declared to constitute a territory of the United States under the name of the Territory of Orleans; and the residue, a district by the name of the District of Louisiana. The "provision" made for the government of these divisions, was not, as in the case of the territory ceded by the southern states, the immediate extension to them of the ordinance of 1787, but a system of peculiar regulation fitted to mould the inhabitants by degrees to the system of that ordinance. Some particular acts of the Federal Government were selected, and declared to have full force in the new territories; among them, that of March 1794 prohibiting the carrying on the slave trade from the United States; and another (of February 28th, 1803) prohibiting the importation of slaves into states whose laws interdicted their admission. The importation of slaves from abroad was like-

* See the Debates in Congress on this subject (1814.) Also, the opinions of Mr. Madison and Mr. George Nicholas, in the Virginia Debates, p. 360, 365.

wise directly forbidden, and those remarkable dispositions made to which I have already had occasion to advert, respecting the exclusion of a certain description of slaves brought from any place within the limits of the Union. It seems to have been an object with Congress, to prevent the province from becoming a mart for the traffic either external or internal in human flesh.

In March 1805, Congress passed another act "providing for the government of the territory of Orleans." On this occasion, a government was given to it "in conformity with the ordinance of 1787," and it was enacted that "from and after the establishment of the said government, the inhabitants of the territory should be entitled to and enjoy all the rights, privileges, and advantages secured by the said ordinance, and then enjoyed by the people of the Mississippi Territory." Here is what might be interpreted into a fulfilment of the stipulation of the treaty—that they should be admitted as soon as possible to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.* The sixth article of the ordinance (that which abolishes slavery) was "excluded from all operation within the territory of Orleans." The circumstances were also specified, under which the territory should be admitted as a state into the Union "upon the footing of the original states in all respects whatever." Of these circumstances one was, that the Constitution which it might form should be consistent with the ordinance of 1787, so far as the same was made applicable to the territorial government.

In the month of February 1811, an act was passed to enable the people of the territory of Orleans to form a constitution and state government, &c. The language of the first section of the act is "and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and *upon the conditions* hereinafter mentioned." Among these conditions are the following—the constitution shall contain the fundamental principles of civil and *religious* liberty; "after the admission of the said territory of Orleans as a state into the Union, the laws which

* See note K.

such state may pass shall be promulgated and its records of every description shall be preserved, and its judicial and legislative written proceedings conducted, in the language in which the laws and the judicial and legislative written proceedings of the United States are now published and conducted." To these restrictions are added the usual ones respecting the waste and unappropriated lands, the taxation of certain property, the freedom of the rivers, &c."—none of which are specified in any regulation of the Federal Constitution.

Louisiana having accepted the conditions proposed, and formed a constitution, an act was passed by Congress in the month of April 1812, for the admission of the State into the Union.

By the first section of the act, Louisiana was declared to be admitted into the Union on an equal footing with the original States in all respects whatever, *provided* " it should be taken a condition upon which the said State was incorporated in the Union, that the river Mississippi and the navigable waters leading into the same and into the Mississippi should be forever free without duty, toll, &c. and that the above condition and also all other the conditions and terms contained in the act of February 1811, should be considered, deemed, and taken, *fundamental conditions and terms*, upon which the said State was incorporated in the Union."

It must be evident from the preceding extracts, that if Congress did not impose upon the State of Louisiana the condition of excluding slavery, it was not from a doubt of their constitutional competency, or a belief that they were disabled by the article of the treaty with France. This article, though it might be understood to deprive them of the power of refusing to receive the inhabitants of the province into the Union, *upon any terms*, yet consigned the mode and terms to the same discretion by which they had been determined in other cases. As to these points, it clearly leaves the question on the original footing. No politician could suppose that the clause in the article—" according to the principles of the Constitution"—had a signification im-

plying that the Federal Government would, in any instance, depart from those principles. This would follow, however, if it were meant as a limitation upon that government, and not merely as one upon the right stipulated for the inhabitants of the province, of being "admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States." It was intended to acknowledge the subordination of that right, to the powers on the subject vested generally in Congress by the Constitution, and recognized in uniform practice; of which powers that body was to judge, and in which the imposition of conditions was included.

Certainly, the idea was not entertained, that the inhabitants of the States north-west of the Ohio had not been admitted into the Union, "according to the principles of the Constitution;" or had been denied any of the "rights, advantages, or immunities of citizens of the United States," because the prohibition of slavery had been prescribed to them as a condition of their admission. It never was understood—it never had been pretended—that any principle of the constitution required the reservation of the power of maintaining slavery, to the new States; or that citizens of the United States, *as such*, did or could hold slaves. These were known to be legally held *only* under the authority of state governments. If it were the right of a citizen of the United States, *as such*, to hold them, then they might be legally held as well in New York or Pennsylvania, as Georgia; since a *federal right* could not be impaired by the laws of any member of the confederacy. The abolition acts of the eastern States would be rendered altogether nugatory.

If Congress could not suppose that the obligation of admitting the inhabitants of the province of Louisiana, to the rights of citizens of the United States, *in the manner conformable to the principles of the constitution*, carried with it the obligation of allowing hereditary bondage to be perpetuated among them,—that assembly could as little ascribe this virtue to the last clause of the article above mentioned, which stipulates for them, "the free enjoyment of their liberty, *property*, and the religion which they profess. I have said enough to show that it is not by a reference to the Con-

stitution, to reason, or to the law of nature, the word *property* could be understood to embrace *slaves*. Nor would it be, by a resort to treaties, of which the clause in question is but a common, vague formula, when inhabited territories are transferred from one sovereign to another. "As all nations," says Mr. King, very justly,* "do not permit slavery, the term property, in its common and universal meaning, does not include or describe *slaves*. In treaties, therefore, between nations, and especially in those of the United States, whenever stipulations respecting slaves were to be made, the word "negroes" or "slaves" has been employed, and the omission of these words in this clause, increases the uncertainty whether *slaves* were intended to be included."

Taking then the word *property* as one of uncertain import in this case, and premising the incontestible maxim that the toleration of slavery is, in general, unlawful and inhuman, let us see what received rules of interpretation we have, by which we should be guided in construing the clause. The first which I shall quote is,—that you must always presume the contracting powers, in a treaty, to acknowledge allegiance to the laws of the moral world; to aim at promoting the ends of justice and philanthropy; and to mean, therefore, that whatever would counteract those ends, should be excepted from the possible scope of their stipulations. They are not to be supposed to have the intention, as in fact, they can never have the power,† of binding each other to commit evil. There are exceptions so clear that it is understood to be superfluous to express them; and these are, of proceedings criminal and pernicious in themselves.

"If the expressions of a treaty," says Vattel,‡ "are indeterminate, vague, or susceptible of a more or less extensive sense—if the precise point of the intention of the contracting powers, in the particular case in question, does not appear, it should be presumed according to the laws of reason and equity; and for this purpose it is necessary to pay attention to *the nature of the things to which it relates*. There are things as to which equity allows of greater ex-

* Ubi supra. † See Vattel, B. 2d. C. xii. ‡ B. 2d. C. xvii.

tension than restriction; such are the things called *favourable*. The *odious*, on the contrary, are those as to which restriction tends more certainly to equity, than extension. Among the favourable are to be reckoned the things which are useful and salutary to human society; among the *odious* every thing that, in its own nature, is rather hurtful than of use to the human race. We should, in relation to things odious, when the will of the contracting powers in a treaty, is not exactly determined and precisely known, take the terms used *in the most confined sense*, and we may even, to a certain degree, admit the figurative, to remove the burthensome consequences of the proper and literal sense, or what it contains that is odious: for we fly from what is odious, so far as this may be done, without doing violence to the terms. Now, neither the confined, nor even the figurative sense, does any violence to the terms." That this author himself considered as eminently *odious* in his sense, all that might conduce to enlarge or perpetuate slavery, could be shown from various passages of his excellent work.*

We know from the books of history and travels, that the positive laws of some nations, and the customs of others, acknowledged in parents an absolute *property* in their children.† These might be sold, put to death, or disposed of in any way, at pleasure. If this order of things had existed in Louisiana, at the period of the cession, by virtue either of statute or prescription,—if this spurious species of *property* had been asserted by the inhabitants,—could it be supposed to have been mutually understood to be included in the clause in question? Because, by a perversion of language, it bore, there or elsewhere, the name of property, must we have taken it as belonging to a description of property in the perpetual enjoyment of which the United States stipulated to maintain and protect the inhabitants? Above all, would any one have ventured to represent the Federal Go-

* See B. 3d. C. xiii.

† Such was the Roman Law before the imperial constitutions. "In liberos suprema patrum auctoritas esto; venumdare, occidere liceto." *Paley*, in denying the right of parents to sell their children, (M. and P. Philosophy, B. 3d C. 10.)—adds—"Upon which by the way we may observe, that the children of slaves are not, by the law of nature, born slaves; for as the master's right is derived to him through the parent, it can never be greater than the parent's own."

vernment, in discharging the obligation which I will grant to have been created by the treaty, of admitting them into the Union *according to the principles of the Constitution*—as compelled *by those principles* to abstain from imposing any restriction upon them, in respect to the indefinite continuance and extension of this hateful and mischievous institution; knowing, too, that such was their insane purpose; that they cherished it with a blind and shameless ardour of cupidity?

There is nothing unfair or illogical in mooting such cases, and reasoning from them. It is the *reductio ad absurdum*—it shows the unsoundness of the general doctrine, that Congress in associating a new State to this Union, can require of it nothing but what is exacted of every member by the *letter* of the Constitution; that, having, perchance, incurred the obligation of admitting the inhabitants of a certain foreign territory—not peremptorily and without qualification, but *according to the principles of the Constitution*—it is obliged, at the same time, to admit them with whatever social distemper and deformity they may please to maintain, which is not specifically proscribed in that instrument, or incompatible with a republican *form* of government. How many practices and institutions of a deleterious and ignominious nature, which fall within the class just mentioned, can be supposed, without contradicting experience or probability, is well known to those who are acquainted generally with the past history and actual condition of the various communities of the earth, or of this continent in particular. In fact, I cannot but view as absolutely monstrous, that doctrine which would go to establish the necessity, of extending the powerful protection and nutritive care of the Federal Government,—of imparting a full share in the national authority and councils—to a new community, whatever outrage upon human rights and Divine law, of the number left untouched by the letter of the Constitution and reconcileable to the *form* of a republican government, it might betray the resolution to *organize* and perpetuate.

In holding this language, I am not dealing in the metaphysics of the question, or following out its mere shadows. The Constitution assigns no limits as to the theatre from which Congress may select new members for this Union.

The North and South of this Continent, as well as the West and South West, the West Indies,—are *competent* candidates for admission. * * * * But, abandoning the field of fearful speculation which this consideration opens, we may fix our thoughts merely upon the West, and reason in relation to the communities still to be formed beyond the Mississippi, in the vast region remaining as territory to the Federal Government. We can imagine those communities, at the distance and in the peculiar scenes in which they will be placed, to contract dispositions and habits, to receive distortions and taints, in the course of their advancement to the size usually exacted as preliminary to admission into the Union, which would render them not only *unfit* to be introduced, but dangerous as associates in the national sovereignty; which might cause the miscarriage of all the original objects of this Confederacy; pervert it from its true and noblest ends: give it an entirely morbid complexion—unless Congress should possess and exercise the power of prescribing to them, new arrangements in their internal economy, of an assimilating and corrective tendency.

We need not, unfortunately, employ ourselves in *conjecturing* causes of incongruity and depravation: we have one at hand and assured, in *negro-slavery*, which, if allowed to that portion of the countries under consideration, which is now claiming admission as a state, would unerringly take root throughout the whole of them, and overspread their immense surface. This corruption is, beyond any one possible under the letter of our Constitution and the forms of republican government, ominous of the fatal effects which I have mentioned above; subversive of the designs of Providence for man, and insulting to his goodness and power. When the natural consequences of its boundless prevalence in this way, and of an entire predominance of the slave-holding interest and feeling in the Federal Legislature, are barely descried—when we image to ourselves the new generations of human beings, the new myriads of blacks, crouching under the galling yoke of bondage, and perpetually irritating by the spectacle of their misery and degradation, the justice of Heaven—when, in short, we bring to view the moral

desolation, the physical ills, and the political dangers, of which the idea cannot be separated from that of the diffusion of slavery from the Mississippi to the Pacific—contrasting them, too, with the pictures of moral beauty, of universal freedom and civilization, and permanent, honourable welfare, which the certainty of its absence would allow us to draw*—we are then at once struck with the exorbitance

* We find in the works of Savage, a full perspective of this kind, sketched near a century ago and intended for North America. Both the light and shade may suit the present ease. The poet personifies Public Spirit, and introduces his goddess speaking thus—

Rapt, I a future colony survey!
Come then, ye sons of Misery! come away!
Let those, whose sorrows from neglect are known
(Here taught, compell'd, empower'd) neglect atone!
Let those enjoy, who never merit woes,
In youth th' industrious wish, in age repose!
Allotted acres (no reluctant soil)
Shall prompt their industry, and pay their toil.
Let families, long strangers to delight,
Whom wayward Fate dispers'd, by me unite;
Here live enjoying life; see plenty, peace;
Their lands increasing as their sons increase.
As Nature yet is found, in leafy glades,
To intermix the walks with lights and shades;
Or as with good and ill, in chequer'd strife,
Various the goddess colours human life:
So, in this fertile clime, if yet are seen
Moors, marshes, cliffs, by turns to intervene;
Where cliffs, moors, marshes, desolate the view,
Where haunts the bittern, and where screams the mew;
Where prowls the wolf, where roll'd the serpent lies,
Shall solemn fanes and halls of justice rise,
And towns shall open (all of structure fair!)
To brightening prospects, and to purest air;
Frequented ports, and vineyards green succeed,
And flocks increasing whiten all the mead.
On science science, arts on arts refine;
On these from high all Heaven shall smiling shine,
And Public Spirit here a people show,
Free, numerous, pleas'd and busy all below.
Learn, future natives of this promis'd land,
What your forefathers ow'd my saving hand!
Do you the neighbouring blameless Indian aid,
Culture what he neglects, not his invade,
Dare not, oh dare not, with ambitious view,
Force or demand subjection never due.
Let, by my specious name, no tyrants rise,
And cry, while they enslave, they civilize!
Know, Liberty and I are still the same,
Congenial!—ever mingling flame with flame!'

of the proposition that the Federal Government is condemned by the Constitution not merely to permit, when it otherwise might avert, but to sanction and subserve such an aggregation of calamity and crime!

In contemplating a futurity such as I have just presented, we are led to seek for another theory of construction more suitable to the occasion; and this we may find, consecrated by the authority of the highest judicial tribunal of this country. It is from the Reports of the Cases argued and determined in the Supreme Court of the United States, (4 Wheaton, case of M'Culloch *vs.* State of Maryland,) that I make the following extracts, of which the application need not be indicated.

MR. PINKNEY.

"Congress is *prima facie* a competent judge of its own constitutional powers. It is a duty to construe the constitutional powers of the national government liberally, and to mould them so as to effectuate its great objects."

"The constitutional government of this republican empire cannot be practically enforced, so as to secure the permanent glory, safety, and felicity of this great country, but by a fair and liberal interpretation of its powers; those powers could not all be expressed in the Constitution, but many of them must be taken by implication."

CHIEF JUSTICE MARSHALL.

"The Federal Government proceeds directly from the people; is 'ordained and established' in the name of the people 'in order to form a more perfect union, establish justice, ensure domestic tranquillity, and secure the bless-

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Why must I Afric's sable children see
Vended for slaves, though formed by Nature free,
The nameless tortures cruel minds invent,
Those to subject, whom Nature equal meant?
If these you dare (albeit unjust success
Empowers you now unpunish'd to oppress)
Revolving empire you and your's may doom
(Rome all subdued, yet Vandals vanquish'd Rome)
Yes, empire may revolve, give them the day,
And yoke may yoke, and blood may blood repay.

ing of liberty to themselves and their posterity.' It is truly and emphatically a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

"Even the tenth amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly,' and declares only that the powers 'not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people;' thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend *on a fair construction of the whole instrument.*"

"Its nature requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

"In considering this question, we must never forget, that it is a *constitution* we are expounding."

"The subject is the execution of those great powers, on which the welfare of a nation essentially depends. It must have been the intention of those who gave those powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs."

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

If the text of the Constitution were, unaccountably, such as to warrant the interpretation, that the Federal Government was denied the power of imposing any restriction as to

slavery, upon the new states *which the Convention had in view*, still I would contend that, in an extreme case like the present, never contemplated nor imagined,* that government would be at liberty to consult the national interests, and minister to the ends of Eternal Justice and Benevolence. The principle of this dispensation from the letter of the Constitution, may be illustrated in an example offered by Vattel. "Let us suppose," he says, "a captain has received orders to advance in a right line with his troops to a certain post: he finds a precipice in his way; he is certainly not ordered to throw himself down it; he ought therefore, to turn from the right line, so far as is necessary to avoid the precipice." One of the general rules which this author establishes, deserves also to be quoted as decisive of the course Congress should pursue, in the interpretation of the Constitution, on an occasion of the nature here described. "In unforeseen cases, that is, when the state of things is found such as the author of a disposition has not foreseen, and could not have thought of, we should rather follow his intention than his words, and interpret the instrument as he himself would have interpreted it, had he been present, or conformably to what he would have done, if he had foreseen the things that have happened."

I may array in this place some points, respecting which no candid and unbiassed reader of what precedes, will, I think, hesitate for a moment:—1st. That, if the introduction of negro-slavery had been an original question for the Federal Convention, and there had been cause to apprehend it, they would most earnestly have provided against it in the Constitution:—That if the pestilence had been confined to one or two States only, they would have insisted upon direct provisions either for its gradual extirpation, or its strict compression within its cotemporary limits:—That, as the case was, if the consent of the slave holding States could have been obtained, a period would have been fixed for the enterprise

* See the No. 14 of the Federalist; from the tenor of which it is evident, that no idea was entertained of the extension of the Union beyond the limits of the territory, which the United States held when the Constitution was formed.

of total abolition, by measured degrees:—That, if the majority of the Convention who, at the risk of foregoing the Union, refused to allow the slave trade, internal or external, to the old States, for a longer term than twenty years, or to secure its toleration for a moment as to the new, had had even a presentiment of such a question arising for the decision of Congress, as the establishment of slavery in another great division of this continent, they would have left no room for suspense;—or, if they were now at hand to interpret their work, in reference to it, they would quickly determine in the negative. We are not permitted to think otherwise of the men who would not suffer the Constitution to be profaned with the word *slave*, and who had fresh in their memory and hearts, when they contrived this charter of freedom, the following peroration of an address of Congress* (which too, no inconsiderable part of them had signed), to the confederate states.

"Let it be remembered, *that it has ever been the pride and boast of America*, that the rights for which she contended, were *the rights of human nature*. By the blessing of the Author of these rights, on the means exerted for their defence, they have prevailed against all opposition, and form the basis of thirteen independent states. No instance has heretofore occured, nor can any instance be expected hereafter to occur, in which the unadulterated forms of republican government can pretend to so fair an opportunity of justifying themselves by their fruits. In this view, the citizens of the United States are responsible for the greatest trust ever confided to a political society. If justice, good faith, honour, and all the other qualities which ennoble the character of a nation, and fulfil the ends of government, be the fruits of our establishments, the cause of liberty will acquire a dignity and lustre which it has never yet enjoyed; and an example will be set which cannot but have the most favourable influence on the rights of mankind. If on the other side, our governments, should

* April 1783.

be unfortunately blotted with the reverse of these cardinal and essential virtues, the great cause which we have engaged to vindicate will be dishonoured and betrayed, the last and fairest experiment in favour of *the rights of human nature* will be turned against them, and their patrons and friends exposed to be insulted and silenced by the votaries of tyranny and usurpation."

With regard to the interpretation of the word *property* in the article of the Treaty, the utmost scope which Congress could have thought themselves *bound* to give it,—if they allowed it to reach the case of human beings at all, —was the maintenance of the existing relations between the white population and the individuals held in bondage; and the enjoyment of the services of the offspring of the latter, until they reached that age at which they could be supposed to have indemnified the master, by their labour, for the expenses incurred on their account from their birth to their adult state. If we were to acknowledge Congress to have been bound, *upon general principles*, to give greater comprehension to the term in this case, we should accuse the states that have abolished slavery within their limits, of having committed a flagrant wrong, and a direct breach of their Constitutions.* I have never heard that such an accusation has been preferred against them, or deemed tenable.

If there could be upon general principles, a descendible *right* of property in the negro and his offspring in perpetuity, that right was as complete and as fully vested in the slave holder, of Pennsylvania for instance, as it ever was or will be, in any part of the world; and the state could not lawfully despoil him of it, or curtail it without making him compensation. This commonwealth and the others who took a similar course as to slavery, had admitted and legal-

* "Whenever the public exigencies require that the *property* of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor."—Constitution of Massachusetts.

"Nor shall any man's *property* be taken or applied to public use, without the consent of his representatives and without just compensation being made."—Constitution of Pennsylvania.

ized, the application of the term property to the slave; *in practice* they had allowed it to be asserted in the utmost latitude: they had therefore, apparently, no room left,—as Congress had in the case of its occurrence in the treaty,—to deny it all reference to the human being: they seemed, on the contrary, precluded from limiting its comprehension in any manner, seeing that the indefinite was the prescriptive one among themselves. But they did contract it, without making indemnity to their citizens whom this legislation directly abridged of so much wealth; and in so doing, they virtually denied the existence of such a *right* of property as the one mentioned above; or that it could be created by prescription, custom, or even legislative acts regulating possession and use. We have, here, on this point, the deliberate judgment, hitherto unimpeached even as to its sweeping application, of six state governments; forming a cumulative precedent for Congress, as to the utmost extent of its *obligation* in the interpretation of the term property in the treaty;—a precedent, which if not binding upon that body, has at least a claim to much deference.

Massachusetts, as we know, dealt with the subject in a more summary way than the other abolishing states, who all went to the limits which I have marked out, as the ultimate to which Congress could have supposed its duty in the matter to extend. So early as 1770, her courts of justice supported the negro slave in pleading against his master, the principles of the common law, and rejected the pretension of property even in the services of the former, unless founded upon express contract. "The present Constitution of Massachusetts," says Dr. Belknap, "was established in 1780. The first article of the Declaration of Rights asserts that 'all men are born free and equal.' This was inserted, not merely as a moral and political truth, but with a view to establish the liberation of the negroes on a general principle, and so it was understood by the people at large. The decisions of the judicial tribunals were in conformity with this understanding."*

* See 4th Vol. Massachusetts Hist. Coll. "The state of New Hampshire established their Constitution in 1783; and in the first article of the declaration of

The conduct of the abolishing States forbids to those of their representatives in the Federal Government, who would not arraign them of usurpation, the acknowledgment of a *right* of property such as that under consideration, or of an obligation in the Federal Government to act in any case upon this notion; and it furnishes their high authority for the following propositions which it implies as a part of their creed and motive. 1st. Hereditary servitude is in itself a violation of rights and duties *essential* to human nature, and therefore can find a warrant neither in prescription, convenience, general practice, nor statute of any kind—in nothing but absolute *necessity*. 2. No plea is sufficient to excuse any community for maintaining it, but that of *self-preservation*. 3d. A presiding government, having jurisdiction in the case, is justified in permitting it, only where its abolition would endanger in a high degree the general safety.

Take it apart from these salvos, and, indeed, then to assert its propriety or deny its unlawfulness, would be to disown all moral relations between man and man, and even all subordination and responsibility to the Creator, if not his very existence. Whatever right it could imply, would be only the right of the strongest;* and its advocates must at the same time become those of political slavery, and of every species of dominion founded in force or fraud. There would be an entire apostacy from the whole established code of political and religious ethics—the more sacred and obligatory, however, for us, because it is, in some sort, wrought into all our Constitutions. If any description of men could, without having their own personal safety and liberty, or their political existence or independence, at stake, but merely for their greater convenience, or wealth, or dignity, or scope of command, or from luxurious habit, lawfully retain another description of men in personal bondage of such a character as that in which our negroes are now held, then,

rights, it is asserted, that "all men are *born* equally free and independent." The construction there put on this clause is, that all who have been *born* since the constitution, are free; but that those who were in slavery before, are not liberated by it" *Ibid.*

* *Hercules* is the tutelary god of slaves in the ancient Mythology.

the similar subjection of the whites of Maryland to those of Virginia, as it would answer the same ends, would be of equal validity, if it could be brought about; and we could find nothing wrong in the slavery of the multitude in aristocracies or absolute governments; in the condition of the people in Poland or Algiers.

The Congress of the United States could never allow itself to be betrayed into a doctrine or course of proceeding, which would involve it in such a labyrinth of inconsistency and heresy both moral and political.

SECTION III.

With the principles and the facts which I have submitted in the preceding sections, fully impressed on our minds, we shall have little difficulty in deciding upon the claim of the inhabitants of the Missouri Territory to be admitted into the Union, free from all restraint in relation to negro-slavery. In this case, I am naturally led to advert in the first instance, to some parts of the act of Congress (of June 4th, 1812) providing for the government of that territory; which is not an extension of the ordinance of 1787, to the inhabitants, but a distinct body of regulations. The 14th section treats of "the rights secured to the people of the territory;" and among the number of those rights is the following: "No *man* shall be deprived of his life, *liberty*, or property, but by the judgment of his peers and the law of the land." The 15th section provides that "no tax shall *ever* be imposed on the lands the property of the United States; that the lands of non-resident proprietors shall *never* be taxed higher than those of residents, that the Mississippi and Missouri Rivers shall be *for ever* free, &c." These and other restrictions indefinitely prospective, extending to the period when the territory should have become a sovereign state, and affecting rights of sovereignty not surrendered by the original states, were submitted to without a murmur, both in the Territory, and in Congress. No protest was entered from any quarter, in favour of the sovereignty then germinating, and thus shorn in advance.

But, when, during the last session of Congress,—the people of the territory having become sufficiently numerous for admission into the Union, and a bill having been framed in the usual form to enable them to be admitted,—an amendment was proposed which required the prohibition of the introduction of slaves into the new state, and the emancipation of the offspring of those already there, at the age of

twenty-five,* the most vehement opposition was made to the imposition of these conditions, by the delegate of the Territory, and supported by the representatives of the slave-holding states. The delegate averred that "the spirit of *freedom* burned in the breasts of the people of Missouri, and that they would not come into the national family with this suspicious, *shameful* inhibition in their charter,"† —against the perpetuation of slavery! It was not denied in any quarter, that the freemen of Missouri would themselves, if left at liberty, take no measures to prevent that catastrophe, or the multiplication of the race of slaves by every mode.

The advocates of the Missouri claim to exemption from the provisions of the amendment, found themselves compelled to contend, *in limine*, that Congress possessed no constitutional power to prescribe to a new state, any restriction of whatever kind, under which the original states did not labour. This was to accuse the Federal Government of usurpation in every instance of the admission of a new state, except those of Vermont and Kentucky. The doctrine of Missouri is amply refuted in the preceding pages. I need but appeal to the *practice* in the case, as I have detailed it, to preclude all controversy. It must be sufficient to fix the opinion of the public at large, as it would be, under all the circumstances, to govern that of the high judicial tribunal, which has cognizance of the point of the conformity of the Acts of Congress with the Constitution. That I may not appear to overrate the authority of such a precedent as that of the ordinance of 1787, looking particularly to its application to the States formed out of the North Western Territory, I will quote from the reports of two analogous cases determined in the supreme court of the United States.

* The text of the amendment is as follows,—"And provided also that the "further introduction of slavery or involuntary servitude into the said state, be "prohibited, except for the punishment of crimes, whereof the party shall have "been duly convicted—and that all children of slaves born within the said state, "after the admission thereof into the Union, shall be free, but may be held to "service until the age of twenty-five years."

† See his Speech published in the National Intelligencer of March 22d, 1819.

The first is one* in which the principal question was—whether Congress could impose upon the judges of the supreme court the duty of acting as judges of the circuit court; and the point determined—that "a cotemporary exposition of the constitution practised and acquiesced in for a period of years fixes the construction; and the court will not shake it." The judiciary system which imposed the duty abovementioned upon the judges of the supreme court, was enacted (as the ordinance of 1787, with the prohibition of slavery, was re-enacted) by the first Congress in 1787. The counsel before the court answered the exception taken to the constitutionality of the system on this score, in these terms:

"As to the objection that the law of 1789 is unconstitutional, inasmuch as it gives circuit powers, or original jurisdiction, to judges of the supreme court; it is most probable that the members of the first Congress, many of them having been members of the Convention which formed the Constitution, best knew its meaning and true construction. But if they were mistaken, yet the acquiescence of the judges and of the people under that construction, has given it a sanction which ought not now to be questioned."

The following is a part of the opinion of the court, delivered by Judge Patterson.

"Another reason offered for reversal is, that the judges of the supreme court have no right to sit as circuit judges, not being appointed as such, or in other words, that they ought to have distinct commissions for that purpose. To this objection, which is of recent date, it is sufficient to observe, that practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled. Of course, the question is at rest, and ought not now to be disturbed."

* Stuart *vs.* Lard. 1 Cranch.

The other case to which I allude, and from which I have already made some extracts, is that of M'Culloch v. the State of Maryland, turning upon the point of the constitutionality of the Bank of the United States. Since the constitutionality of the ordinance of 1787, and of all the acts founded upon it, is assailed by the pretension of Missouri, and as the material circumstances are the same as in the case of the bank-law, the following passages from the speech of the counsel, and the opinion of the court, cannot fail to be of much efficacy on this occasion.

*Mr. Pinkney.**—"The constitutionality of the establishment of the bank, as one of the means necessary to carry into effect the authorities vested in the national government, is no longer an open question. It has been long since settled by decisions of the most revered authority, legislative, executive, and judicial. *A legislative construction, in a doubtful case, persevered in for a course of years, ought to be binding upon the court.* This, however, is not a question of construction merely, but of political necessity, on which Congress must decide. It is conceded, that a manifest usurpation cannot be maintained in this mode; but, we contend, that this is such a doubtful case, that Congress may expound the nature and extent of the authority under which it acts, and that this practical interpretation has become incorporated into the constitution. There are two distinguishing points which entitle it to great respect. *The first is, that it was a cotemporaneous construction; the second is, that it was made by the authors of the constitution themselves.* The members of the Convention who framed the constitution, passed into the first Congress, by which the new government was organized. *They must have understood their own work.* They determined that the constitution gave to Congress the power of incorporating a banking company."

"Congress is, *prima facie*, a competent judge of its own constitutional powers. It is not, as in questions of privilege

* I quote from this eminent lawyer, not only on account of the great intrinsic authority of his opinions, but because they were all, in this instance, adopted and repeated by the court.

the exclusive judge; but it must first decide, and that in a proper judicial character, whether a law is constitutional, before it has passed. It had an opportunity of exercising its judgment in this respect, upon the present subject, not only in the principal acts incorporating the former, and the present bank, but in the various incidental statutes subsequently enacted on the same subject; in all of which, the question of constitutionality was equally open to debate, but in none of which was it agitated.

"There are, then, in the present case, the repeated determinations of the three branches of the national legislature, confirmed by the constant acquiescence of the state sovereignties, and of the people, for a considerable length of time: Their strength is fortified by judicial authority.

"The reservation on the tenth amendment to the Constitution, of "powers not delegated to the United States," is not confined to powers not *expressly* delegated. Such an amendment was indeed proposed; but it was perceived, that it would strip the government of some of its most essential powers, and it was rejected."

Mr. Chief Justice Marshall:

"It has been truly said, that this can scarcely be considered as an open question, entirely unprejudiced by the former proceedings of the nation respecting it. The principle now contested was introduced at a very early period of our history, and has been recognized by many successive legislatures."

"It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause, and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted; if not put at rest by the practice of the government, ought to receive a considerable impression from that practice."

"It would require no ordinary share of intrepidity to assert, that a measure adopted under these circumstances was

a bold and plain usurpation to which the constitution gave no countenance."

The inhabitants of Missouri, and their auxiliaries in this question, seem to overlook the circumstance, that all the state sovereignties are *qualified* sovereignties. At the formation of the Constitution, the great attributes were surrendered by the people of the States, to effect a greater common welfare, and secure the enjoyment of particular advantages. The same principle, the common welfare—which produced and exacted this sacrifice, then; may, from a change of circumstances, render necessary and proper, now, the surrender of more, from the new members of the Confederation; the solid advantages of the Constitution being extended to them. This would be in a course of analogy with the system of single political communities, which, for the common good, often place the strangers, who would be incorporated with them, under permanent disabilities, besides those to which their original or native members are subjected.* It is the exact conduct of the American people when, acting as a single nation, they established the rule of the Constitution, that "no person, except a natural born citizen; or a citizen of the United States, *at the time of the adoption of the Constitution*, shall be eligible to the office of president."

There would be a serious defect, indeed, in our scheme of government, if the consideration upon which so much of prerogative was, on establishing that government, resigned by the original parties, could not be made operative, when it might be found, in the case of the introduction of new associates, to present itself calling for the surrender of more from them, without however causing that *favour* to cease to be highly desirable, or even intrinsically less valuable. "There

* In England, *naturalization* does not give the faculty of becoming a member of the privy council or Parliament. "No bill for naturalization," says Blackstone, (B. 1. c. 10) "can be received in either house of parliament without a disabling clause in it to that effect." Congress might, I presume, under the general power given to them by the Constitution "to establish an uniform rule of naturalization," limit the comprehension of the word in a similar manner.

ought to be," says the Federalist,* "in the *national* government, a *capacity* to provide for future contingencies, as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity."

Upon these indispensable principles, has the Federal Government acted in the interpretation of its powers; and upon them did the Convention of 1787 proceed, as to the case of the admission of New States. They knew that it might be attended with exigencies not to be foreseen, and important to be at once met; they therefore deposited in the Federal Government, a general discretionary power on the subject, specifying two limitations only, so as to confirm the indefinite character of the discretion in all other respects. Among the possible exigencies above mentioned, there is none for which it was of more consequence to provide, and which appears more likely to have been of the number of those which they anticipated, than the alternative of either rejecting totally a new state, or admitting it with faculties, the exercise of which would counteract the original ends of the Union.

In making these remarks, I have gone upon the supposition, that the establishment or maintenance of slavery, might be classed among the rights of sovereignty. This is assumed by the inhabitants of Missouri. I have, perhaps, already said enough in refutation of the error; but a few observations more of the same drift may not be amiss.

We live, I presume, in a country, where I shall not be liable to contradiction in asserting—That *right* and physical power are not the same thing, and that there is some other law in the state of nature, besides the will of a prevailing force:—That it is not among the natural *rights* of man to enslave his fellow man; but that, on the contrary, personal liberty is one of those rights:—That states are moral, responsible persons, and subject like individuals, to the law of nature; deriving from it their rights as well as duties.

The simple enunciation of these irrefragable propositions is sufficient to make it clear to all, that it is a perversion of

* No. 34.

language to speak of the establishment or maintenance of a domestic slavery which originated in fraud or force; that is, of an organized violation of the natural rights of man,—as among the *rights* of sovereignty. This a false claim destructive of the real one on the other side. There is a solecism in the idea of the commission of what is a wrong under the law of nature, being matter of right under that law.

The duty of self-preservation, founded on the same law, gives *rights* to states as well as individuals. If the safety of the inhabitants of Missouri even *appeared* to depend on the introduction of new slaves and the perpetuation of the system of slavery, among them, they might, perhaps, plead those mere faculties of evil, as *rights* of sovereignty. But it is not denied that they would continue a flourishing community, though the whole amendment stated above, should be adopted by Congress. They do not pretend to advance the plea of the Southern planters, that a population of negro labourers is rendered indispensable for them, by the nature of their climate and staple products. The emancipation of the offspring of the comparatively small number of negroes whom they now hold, could neither induce any personal danger, nor impair their wealth in any sensible degree. On the contrary, it is certain, that by abandoning in the mode proposed, the slave-holding system, they must ultimately gain in every respect, without suffering a present inconvenience worthy of calculation.

We are, then, irresistibly conducted to the conclusion, that the Federal Government in proposing to them the repudiation of domestic slavery, do not ask a sacrifice of right, or even of an additional portion of that natural liberty (always understood to mean *moral competency*) which independent states necessarily surrender in part, when they become members of a political confederation. The State of Missouri would not be the less sovereign for all purposes of just authority and real advantage: she would not be the less entitled to be considered as on an equal footing with the original states, according to the adequate sense in which the framers of the ordinance of 1787 understood the phrase. Her liberties could no more, with propriety, be said to be

abridged or outraged, than those of the individual, who, in a well regulated society, is restrained from usurping an absolute dominion over the person of his fellow citizen. In submitting to the restriction proposed by Congress, she would only place herself under a new incapacity of persisting in the perpetration of a crime, and of marring her happier fortunes. This can hardly be deemed a *grievance;* or at least, it would not seem to be one of such magnitude as to justify the ferment which we witness.

It has been urged as an argument to prove the inequality said to be produced between the new and the old states by the restriction concerning negro-slavery, that such of the latter as have abolished this nuisance, are under no disability with respect to its revival within their bosom. But, the other restrictions would furnish much stronger argument of the same purport; since the old states can and do tax non-residents' lands higher than the lands of their citizens; can and do tax the property of the United States, levy tolls upon the navigation of their rivers, and have a complete control over religious liberty; all of which rights of sovereignty have been prohibited to most of the new States. In truth, however, if what I have advanced in the preceding paragraphs be just, to re-establish negro-slavery; to create it anew—is not within the moral competency, and of course not among the *rights* of any of the old States: And when the phrase "equal footing" is used in the question of the admission of new ones, we must presume that the inhabitants of Missouri would not themselves profess to understand it, in reference to the unquestionable *abuse* of power; or to any thing else than the genuine attributes of sovereignty. Pennsylvania or Massachusetts, for example, are no more competent to replace the negroes under the yoke of hereditary slavery, than to impose it on any portion of their white citizens. Whether the Constitution leaves them at liberty to do this; that is, would not be thought to reach the case of the usurpation by a portion of the inhabitants of a non slave-holding state, who might happen to be the strongest, of an absolute personal dominion over the remainder,—whether the Federal Government

would not be held entitled to interfere in such a case—is, to say the least, doubtful; and could hardly, I suspect, on the emergency, be deemed an invincible point of conscience even by the most scrupulous of our statesmen. Should a state undertake to revive and cherish the small-pox, or to foster and perpetuate the yellow fever, a supposition not more dreadful, nor, in relation to all the states east of Delaware, more improbable and insulting, than that of the re-establishment of negro slavery—it would, methinks, if her neighbours were not authorised by the *law of vicinage*, or had not the physical force, to restrain the attempt, form that kind of extreme case which would *place itself* within the cognizance and management of the Federal Government.

The manner of urging the pretension of Missouri betrays a forgetfulness of some points which are not undeserving of notice. Our new states are not to be viewed in the same light as communities originally and vigorously independent; who could treat on a footing of immediate mutual advantage, and in whom a lofty tone of conscious sufficiency, and sturdy tenaciousness of power, might be somewhat becoming. The former are mere creatures and nurslings of the Union; indebted for their release from leading-strings, and their admission into the high and profitable partnership, to a sort of parental indulgence exercised upon no calculation or expectation of greater advantage, than would be reaped in prolonging their pupilage. Self-government and the prerogatives of empire are gratuitously extended to them, with a truly prodigal alacrity of kindness and munificence. Hence, the Federal Government might be held to be entitled to a wider discretion in dictating terms; its own interpretation of its constitutional powers in this respect to greater deference; and its decisions to more ready and respectful submission. Though the soil of Missouri be not a part, or an original domain of the good old states, nor peopled altogether by native children of this republic; yet the great majority of the present inhabitants are of this description; and the remainder owe an inextinguishable debt of gratitude for their rescue from the

hands of Spain or France. Even when divested of the faculty of outraging heaven by oppressing humanity in the persons of the blacks, they may still, in contrasting their condition and that of their country, with what it would have continued to be, under the dominion of either of those powers, glow with sentiments of acknowledgment and filial piety to the Union.

Another ground upon which a greater latitude of power as to restriction, would be necessarily inferred for the supreme government, is this—that it is not merely a federal but a *national* one in no inconsiderable detail. Being directly a trustee of the whole American people, it has a more immediate care of their welfare, a heavier responsibility, and of course, we must presume, ampler powers, in relation to the defence and advancement of that welfare in every instance of particular concern. That of the admission of a new state would surely be of this character, though our union were merely federal; but it is evidently rendered more so by the greater intimacy of association and interests produced by our *national* compact.

Not only the domestic institutions as well in their remote tendency, as in their immediate influence, but the general dispositions, of the candidates for admission into the national family, and for a share in the management of its destinies, become of considerable consequence to the people of the original Union, and would, therefore, seem to fall, properly and constitutionally, within the cognizance of the guardians and agents of the national welfare, as matter by which their decision should be affected. If we suppose the case of a community appearing in the character of a candidate, but clamorous at the same time for an exemption from all restraint upon an avowed intention of maintaining hereditary servitude among them, without having any other plea to offer for it than their mere convenience—making, in this way, a fond *election* of evil and crime—attempting to browbeat the national councils into a compliance with their flagitious aims—fiercely chiding all delay, and threatening in the event of a refusal, a violent revolt from the federal autho-

rity, their lawful and absolute sovereign*—if we supposed a case of this complexion, we could hardly doubt either the competency or the obligation of the national legislature, in pursuance of their general trust with regard to the stability and honour of the Union, to detain without its pale, those who gave such evidence of principles and affections, so little befitting the character of its citizens. Such conduct could not be denied to warrant the apprehension that, if suffered to enter, they would afterwards submit to its sway, however regularly expounded and exercised, only when obedience was not at variance with their inclination or fancied interest, of the moment.

In the actual instance of the inhabitants of Missouri, were the Federal Government entitled to view as a criterion of their universal mood and doctrine, the address to Congress on the subject, from one of their religious societies, it might conceive a degree of alarm and disgust which would prompt to their exclusion for a longer term, even should they consent, at once, to receive and execute the Amendment. We can scarcely, indeed, imagine it possible that any body of American freemen, would, without a sort of compulsion from a general distemperature about them, assemble *specifically as Christians*, taking "the religion of Jesus" as their canopy, and invoking the name of God,—to assert before this nation and the world *slave-holding* as their *right*, and the perpetuation of slavery as the right of their community; to vindicate the claim of *absolute* property in human flesh; to teach the injustice of emancipation, and to represent those who aim at effecting it in Missouri at a considerable distance of time, as it was effected in the Middle and Eastern States,

* See the speech of Mr. Scott, delegate from Missouri, delivered during the present session of Congress, as reported in the National Intelligencer, December 15th. "He, Mr. Scott, hoped that the proposition to postpone the question (of providing for the admission of Missouri into the Union) till the first Monday of February would not succeed. If the bill ultimately was lost, it was necessary that the people of Missouri should be soon apprized of its failure, that they might have time *to act for themselves*, and frame a form of government, *which he was convinced they would do*, without waiting again *to apply to Congress* for the mere means of organization"!! This is the language of *anarchy*, and it is surprising that the *esprit de corps* alone, as to the supremacy of the Federal Government, did not impel the representatives of the old southern States, to reprove and resist so bold a defiance of its authority, and so dangerous a precedent of misrule.

in the light of blind zealots and mistaken philanthropists!* If so desperate a sally of avarice, in the disguise of Christianity—so abominable a profanation of the Divine Name and institute—were necessary, to gratify the public sentiment, we can have no hesitation in saying, nor the Congress in deciding, that Missouri is not yet worthy to be inaugurated as a member of this Union.

The chief reliance of the inhabitants of Missouri, in the argument, would seem to be the article of the treaty of cession, and the exemption of the State of Louisiana from restriction as to slavery. With regard to the article, the suggestions of my second section explain sufficiently, of how little avail it is to them, and that the question is left on its original footing. It refers them to the principles of the Constitution—that is, places them within the control of the constitutional powers of Congress. If it be conceded that the Federal Government contracted an obligation to admit them, this does not affect the point at issue. The obligation is qualified by the liberty expressly left, of determining the circumstances under which the admission should take place. The United States covenanted, as pointedly and solemnly, with the State of Virginia, to receive the North West Territory into the Union; yet they did not hesitate to impose upon the states formed out of it, among many conditions of admission, that of the immediate, perpetual prohibition of slavery. This is not to be found, either required or hinted, in any of the legislative acts of Virginia relative to the cession.

Louisiana was, it is true, incorporated free from restriction as to slavery. But the constitutional power of Congress is not annulled, because it was not exercised in this instance, on that particular point. It was fully exerted, in the same case, on others no less striking and conclusive as to the principle in question. In this view the precedent militates

* See the Address to Congress of "The Delegates from several Baptist Churches of *Christ*, composing the Mount Pleasant Association holden at *Mount Zion* meeting house, Howard County, and Territory of Missouri, on the 11th, 12th, and 13th days of September, in the year of our Lord one thousand *eight* hundred and *nineteen*."

strongly against Missouri. Congress, in leaving untouched the system of slavery in Louisiana, acted upon a cogent expediency, embracing the peace of that state, and the Southern region generally. The slavery in Louisiana appeared, from the number of the negroes, and the inveterate habits and dispositions of the considerable white population, to be a necessary evil; that is, one which supposes that some other and greater evil would be incurred were it removed. Is this the case as to the slavery existing in Missouri? It cannot be pretended. Missouri, then, stands towards Congress, on this subject, in a very different relation from that in which Louisiana stood. Her situation would furnish *no excuse* for stopping short, in her case, of the measures of restriction proposed by the amendment. If the propositions which I have adduced near the close of the preceding section, as the grounds of the abolition in Pennsylvania and the Eastern States, be sound, Congress cannot refrain from what is now attempted, without violating their duty, and sacrificing the national character. "All persons," says Mr. Burke, "possessing any portion of power ought to be strongly and awfully impressed with the idea that they act in trust, and that they are to account for their conduct in that trust, to the one Great Master, Author and Founder of society."

Were we to allow that the restriction in question might have been fastened upon Louisiana without ruinous consequences, we would be involved in no other conclusion than this, that Congress had transgressed in one instance, and should, therefore, be more anxious and determined, about doing right in another. The appeal which has been made, in favour of the Missouri claim, to the toleration of slavery in the old States, as a precedent, is still weaker in the point of analogy, as well as reason. It has been repelled, in an excellent newspaper essay,* in a strain of argument and expression which I cannot improve, and a part of which I shall therefore transcribe. "The people of the Western Country have first to show, that their situation is similar

* First printed in the Rhode Island American, and signed William Penn.

to that of the Southern States, when slavery was admitted by the constitution; and they must also show, that the same necessity exists, which induced this country to countenance slavery, before they can claim a privilege of keeping slaves, upon the principle of the confederation. They ought to do more; they ought to show, that such additional necessity is attached to their claim, as will have sufficient weight to counterbalance the still deeper conviction of the injustice and impiety of slavery, which have been produced by increased light and information."

The inhabitants of Missouri take refuge in the word *property* employed in the treaty of cession. Its insufficiency for their purpose has been made apparent. But this can be done by other views than those under which I have displayed it. They are furnished by Mr. King in the following passages of his speech:

"The clause concerning property in the article is expressly confined to the period of the territorial government of Missouri; to the time between the first occupation of the country, by the United States, and its admission as a new State into the Union. Whatever may be its import, it has no reference nor application to the terms of the admission, or to the condition of Missouri after it shall have been admitted into the Union."

"But admitting that *slaves* were intended to be included, the stipulation is not only temporary, but extends no further than to the property actually possessed by the inhabitants of Missouri, when it was first occupied by the United States. Property since acquired by them, and property acquired or possessed by the new inhabitants of Missouri, has in each case been acquired under the laws of the United States, and not during and under the laws of the province of Louisiana."

By far the great plurality of the present inhabitants of Missouri emigrated thither from the United States after the cession; and at least two-thirds of the present slave population have been introduced since that era. One may smile at the claim of perpetual property in this portion and their offspring, set up under the treaty of cession, chiefly by

citizens of these states, strangers in every respect to that treaty. Their pretension implies the assumption as novel as it is preposterous, that the formula of modern treaties concerning the security of the inhabitants of a ceded territory, as to their property, extends to all those who may at any time become inhabitants of the territory; and to the property of every kind which may be ever acquired or held there. Those Americans or strangers who carried slaves to Missouri after the cession, did so at their risk; and surely they cannot be said to have a property in the offspring of those slaves, less equivocal or vulnerable, than that which the Pennsylvania slave-holders whose fictitious entail was docked by her legislature, possessed under the language of the state constitution and the authority of custom.

Among the suggestions made to deter Congress from attempting the restriction, there is one of a singular stamp, particularly indicative of the predominance, in this question, of passion over reason and genuine sentiment. It is urged that Missouri, when become a sovereign state, after accepting the terms prescribed, would be entitled, in virtue of her sovereignty, to disregard them; and we are told that she threatens to pursue this course, should the amendment be adopted. The doctrine of her *right* to violate a solemn pact with the Federal Government is, doubtless, in strict consonance with that of her *right* to perpetuate hereditary servitude; it resolves political sovereignty into an unlimited, illimitable, and licentious will; it discharges it from all duties, and allows it a range of malefaction, bounded only by physical means. Of this kind of sovereignty it would be no unsuitable prelude, to entrap Congress by the acceptance of their terms, with a mental reservation; to secure a place in the Union, only to frustrate their views and deride their authority!

But, would the place be secure? Would not good faith be considered as its tenure? Would it not be forfeited by a violation of the conditions upon which it was bestowed? The compact would be dissolved, and the Federal Government released from the obligation of protecting, if they could not coerce, the recreant state. Assuming that they

have a constitutional power to impose the restriction as to slavery, the right of perpetuating this institution, were it even of an indifferent or innocent nature, would not exist in the new member, upon the established rules of the interpretation of our system. It is settled that where an authority is acknowledged to be granted, either expressly or by implication, to the Federal Government, the states are divested of whatever authority would be contradictory and destructive to the other.* Disobedience on the part of a state to an injunction of Congress exercising a constitutional power, would be the same as disobedience to any particular provision of the constitution itself. Missouri, then, on the supposition that Congress is competent to pass the amendment, would, in disregarding it, act, virtually in the same way, and be subject to the same consequences as if she refused to retain a republican form of government, undertook to make foreign alliances, to coin money, &c.

The Federal Government might exert against her the same means as they would have, to counteract or coerce an original member of the Union obstinate in defeating its constitution and laws. To argue in this manner—Congress have not the power to impose the restriction, because it will be the right of Missouri as a state to maintain slavery, is a mere begging of the question. The proper course is to enquire first whether the power is fairly deducible from the Constitution and the nature of the case; and if this be so, and the power be exercised, all idea of such a right as that just mentioned, remaining to Missouri, is precluded, pursuant to the settled theory of our system, as to points of this nature. The acknowledgment of a right of the kind, would render necessary that of a similar right in Missouri, and the new states already admitted into the Union, with respect to the other articles of compact of the ordinance of 1787, and all other restrictions of whatever tenor, not expressly

* The Supreme Court have exemplified this doctrine in the strongest manner in their decision of the controversy between the State of Maryland and the Bank of the United States. They there limited the application of an admitted authority of the states, in order to give full scope and effect to an implied power of the Union.

designated in the Constitution. The condition in which this consequence would place some of the most important interests of the Union,—for which those articles and restrictions were meant as safeguards—evinces the unsoundness of the tenet to which it belongs. It proves, also, that without the right of prescribing conditions, and a full discretion in the choice of them, the exercise of the general power of admitting new states, would have been so unsafe, in regard to those which Congress had particularly in view, as to reduce that power to a dead letter.*

Sould it be taken as certain, that Missouri would repeal the article, which she might introduce into her Constitution, as a compliance *pro forma* with the amendment; and that the Federal Government would not be able to vindicate their authority so audaciously trampled upon, with the aid of the judiciary, or by any other means, still it would be incumbent upon them to enact the amendment, as the independent discharge of a duty, and a solemn declaration of principle. It is doing much, formally to recognize and establish a great and just maxim of human conduct, in an affair of the utmost moment to the general felicity and honour of mankind. I have hinted in my first pages, the degree of delinquency in this respect, with which the old Congress and the Convention might, perhaps, be reproached. The present question, let the course of Missouri be what it may, enables us to make amends for our remissness, to use the softest term. We should eagerly seize the opportunity as one graciously afforded by Providence, for this valuable purpose, and for that of proving to the world the sincerity of our past professions, and the validity of our pleas, on the subject of negro-slavery. Foremost in the performance of this duty of reparation, should be those

* The true principle of construction, adopted in the case of the Bank, and in other instances is this—"Every power vested in a government is in its nature *sovereign*, and includes by *force* of the *term*, a right to employ all means requisite and fairly applicable to the attainment of the *ends* of such power; and which are not precluded by restrictions and exceptions specified in the Constitution; are not immoral, are not contrary to the essential ends of political society." See the able summary of the arguments in the case of the Bank, by Chief Justice Marshall. in the appendix to the 5th Volume of the Life of Washington.

two Southern States, to whom the Federal Government and the American people owe the disgrace, of the legal prosecution of the slave trade under the American flag, for twenty years after the establishment of the Constitution.

The earnestness, I might say vehemence, with which the pretensions of Missouri are seconded by the representatives of the old slave-holding states, is difficult to be explained in any way which would prevent it from being considered, as striking evidence of the inconsistency of human nature. We could with difficulty imagine that they would now deny, the general power of Congress to impose restrictions not specified in the Constitution. I need not press this point further than to refer again to the facts—of the re-enactment of the ordinance of 1787, under the present government;—of the formal ratification of it by the southern legislatures; of its being the basis of almost every act creating a Territory or new State—of the total silence hitherto observed as to that incompatibility with the Constitution, which is suddenly charged upon some of its provisions. We have heard, too, the boast that it was framed by an eminent delegate of Virginia in the old Congress; and it is not many days since we read in the National Intelligencer, a Resolution of Congress admitting the State of Alabama into the Union "upon an equal footing with the original States in all respects whatever;" and referring to an act accepted by that state, which deprives it of territorial rights not relinquished by the old members of the Union.*

But *expediency* is another and the main ground, of the auxiliaries of Missouri in Congress. It was, when he came to treat of this topic of defence, in regard to the slave-trade, that Mr. Fox exclaimed in Parliament, that it was impossible to have patience on the subject; or to preserve the lenity of language and temperance of argument which philosophy recommended and the cause required. I will not,

* See the Resolution in the National Intelligencer of Dec. 16, 1819. It recites that the people of Alabama "have formed for themselves, a constitution and state government, in *conformity to the principles of the articles of compact of the ordinance of* 1787," &c.

however, allow myself to write from the emotions which might be kindled by the bare fancy of the recognition of a doctrine, under which Lord North and his colleagues would have had no cause for self-reproach, had they succeeded in their worst designs against these states. I cannot suppose that, when *expediency* is talked of in Congress, it is meant that negro-slavery should be maintained and diffused in Missouri, because the institution would promote the convenience, or augment the wealth, or flatter the pride of the whites; because there would be more of certain products of the soil for exportation, or a higher price given for the national lands! Something of the kind has, indeed, been hinted, but the position must be abandoned in a country which abolished the slave-trade professedly *upon principle*.

We cannot maintain it, who have stigmatized the British parliament, for the reasons by which they suffered themselves to be so long deterred from the abolition of that horrible traffic. These reasons, as we well remember, were,—that the national revenues would be impaired; the trade and shipping diminished; the merchants of London and Liverpool deprived of employment for their vessels; the West India lands sunk in price, and the West India planters reduced to a mere competency; the quantity of sugar and coffee considerably lessened, and the sugar cane, perhaps, abandoned, &c. Can we be so blind as not to perceive, that these reasons were as sound and magnanimous in relation to the continuance of the slave-trade, as the suggestions which I have mentioned, can be in reference to the Missouri question, if we admit slavery to be an injustice?

Was there not, as to the first, as much plausibility, elevation, and conclusiveness in the plea, that if it were abolished, the merchants of Liverpool, could not go to the coast of Africa with their ships, as there is in our indignant complaint that if the amendment be adopted, the citizens of the slave-holding states will not be able to emigrate with their

* It was also contended that Parliament had not *power* to abolish the slave-trade; it being properly within the jurisdiction of the West India Legislatures.

slaves to Missouri; that is, to a country where, it is acknowledged, the white man can, by his own labour, provide amply for himself, and his family however numerous; and where he could at once offer a noble, most acceptable, and *profitable* sacrifice to the Deity, by liberating the fellow creatures whom a sad fatality sprung from violence and fraud, had placed in his power?

The remarks of Mr. Wilberforce in the British Parliament, upon the English *expediency*, are susceptible of direct application to the American; and I do not hesitate to repeat some of them here.—"There are persons who adopt a bold language," said this philanthropist, "and who declare without reserve, that religion, and justice, and humanity command the abolition of the slave-trade, but that they must oppose the measure because it is inconsistent with the *national interest*. I trust and believe no such argument will be used again; for, what is it but to establish a competition between God and Mammon, and to adjudge the preference to the latter? What but to dethrone the moral Governor of the world, and to fall down and worship the idol of Interest? What a manifesto was this to the surrounding nations? What a lesson to our own people! Come then ye nations of the earth, and learn a new code of morality from the Parliament of Great Britain. We have discarded our old prejudices; we have discovered that religion, and justice, and humanity are mere rant and rhapsody! Why, sir, these are principles which Epicurus would have rejected for their impiety, and Machiavel and Borgia would have disclaimed as *too* infamous for avowal, and *too* injurious to the general happiness of mankind. If God in his anger would punish us for this formal renunciation of his authority, what severer vengeance could he inflict than our successful propagation of these accursed maxims? Consider what effect would follow from their universal prevalence; what scenes should we soon behold around: in public affairs, breach of faith, and anarchy, and bloodshed; in private life, fraud, and distrust, and perfidy, and whatever can degrade the human character, and poison the comforts of social and domestic intercourse. Men must retire to caves

and deserts, and withdraw from a world become too bad to be endured."

The point of expediency in this question—on the supposition that it is fit for consideration at all—may be understood to refer only to the accommodation and partial relief of the old slave-holding States; or to the *common* gratification and profit. Viewing it in the first aspect alone, and acknowledging the institution of hereditary servitude to be *a great moral and political evil*, would Congress be justifiable in allowing it to be diffused and perpetuated? If the territories owe to the Union a grateful deference, and the disposition to consult even by self denial, the separate interests and virtuous prepossessions of so beneficent and liberal a parent, it is, on the other hand, incumbent upon the Union to study their permanent welfare; and it would be base to immolate them to the particular advantage of some of the members.

Although the new State, from sordid and short-sighted calculations of interest, should be eager to give into a noxious arrangement, yet it ought not to be indulged; it should not be suffered to become the victim either of its own infatuation, or of the selfishness of others. How bitterly and justly have we not reproached England for allowing the destinies of the southern Colonies to be so awfully clouded by the avarice of her African companies? Confessing that our colonial ancestors might have yielded to the peculiar temptations to which they were exposed in this respect, and availed themselves readily of the privilege of maintaining negro-slavery, we have not hesitated to arraign the mother country for granting that privilege, instead of crushing at once an institution likely to prove so tragical in the end.

In the comparison, there would be this, in favour of England—that the evil and guilt of it were not thoroughly known to her; or at least that she had never trumpeted them to the world. Our southern States have done so at times almost emulously, imputing the guilt to the mother country, and disclaiming any other apology for the continuance of the evil, than the necessities of their situation. I will select Virginia as an example on this head, and quote a part of the testimony she has borne by the channel of her most eminent

men, to the character of the institution. The following is a passage of the petition which her assembly presented to the British throne in 1772, against the further importation of negroes.

"We are sensible that some of your majesty's subjects of Great Britain may reap emolument from this sort of traffic, but when we consider that it greatly retards the settlement of the colonies, with more *useful inhabitants*, and may in time have the most destructive influence, we presume to hope, that the *interest of a few* will be disregarded when placed in competition with the security and happiness of such numbers of your majesty's dutiful and loyal subjects."

I know that attempts are made to invalidate the authority of the celebrated passages respecting slavery, of Mr. Jefferson's able and valuable work, the Notes on Virginia. But they stand as the evidence of an eye witness of great sagacity, and the closest observation, writing in the mature vigour of his uncommon faculties, and having every motive to soften the truth. The improvement which has since taken place in the condition of the slaves, cannot affect the essential properties of the institution, to which he refers; and their considerable increase in number gives additional force to some of his remarks. I will extract but a portion of what is so familiar to the public.

"In the very first session held under the republican government the assembly passed a law for the perpetual prohibition of the importation of slaves. This will in some measure, stop the increase of this *great political and moral evil*, while the minds of our citizens may be ripening for a complete emancipation of human nature."

"With what execration should the statesman be loaded, who permitting one half of the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the amor patriæ of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labour for another: in which he must lock up the faculties of his nature, contribute as far as depends on his individual endeavours to the eva-

nishment of the human race, or entail his own miserable condition on the endless generations proceeding from him. With the morals of the people, their industry also is destroyed. For in a warm climate, no man will labour for himself who can make another labour for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labour. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest."

The volume called "the Debates of the Convention of Virginia," is a lasting record of opinions similar to those of Mr. Jefferson, from the mouths of politicians of whose wisdom and patriotism that state boasts not a little, nor without reason. I will select, at random, some sentences from the volume, prefixing the names of the speakers.

Governor Randolph.—"The scattered state of our population, over so extensive a country, is one point of weakness: I wish, for the honour of my countrymen, that this were the only one.

"There is a circumstance which renders us more vulnerable. *Are we not weakened by the population of those whom we hold in slavery?* The day may come when they may make impression upon us. Gentlemen who have been long accustomed to the contemplation of the subject, think there is a cause of alarm in this case: the number of those people, compared to that of the whites, is in an immense proportion."

The same.—"I beseech you to consider, whether Virginia and North Carolina, both oppressed with debts and *slaves*, can defend themselves externally, or make their peo-

ple happy internally. North Carolina having no strength but militia, and Virginia in the same situation, will make, I fear, but a despicable figure in history."

The same.—"Is it unnecessary to provide against future events? The advice that would attempt to convince me of so pernicious an error as that Virginia can stand by herself, I treat with disdain. Our negroes are numerous and daily becoming more so. When I reflect on their comparative number, and comparative condition, I am the more persuaded of the great fitness of our becoming more formidable."

Mr. Mason.—"The government does not attend to our domestic safety. It authorises the importation of slaves for twenty odd years; instead of securing and protecting us, the continuation of this detestable trade *adds to our weakness.* Though this evil (of slaves) is increasing, &c. The augmentation of slaves *weakens* the States. Much as I value an union of all the States, I would not admit the Southern States into the Union, unless they agreed to the discontinuance of this disgraceful trade; *because it would bring weakness and not strength into the Union.*"

Patrick Henry.—"Another thing will contribute to bring general emancipation about. Slavery is detested—We feel its fatal effects—We deplore it with all the pity of humanity. I repeat it again, that it would rejoice my very soul that every one of my fellow beings was emancipated. As we ought with gratitude to admire that decree of Heaven, which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellow-men in bondage."

Mr. Dawson.—"I have such an aversion to the *bitter cup of slavery* that in my estimation a draught is not sweetened, whether administered by the hand of a Turk, a Briton, or an American."

Mr. Innes.—"But we are told that the New-Englanders mean to take our trade from us, and make us hewers of wood and drawers of water; and the next moment that they will emancipate our slaves! But how inconsistent is this? Our antagonists tell you that the admission of the importa-

tion of slaves for twenty years, shews that their policy is to keep us weak; and yet the next moment they tell you that they intend to set them free! *If it be their object to corrupt and enervate us, will they emancipate our slaves?* Thus they complain and argue against it on contradictory principles."

Mr. Zachariah Johnson.—"Our opponents tell us that they see a progressive danger of bringing about emancipation. The principle has begun since the revolution. Let us do what we will, it will come round. Slavery has been the foundation of that impiety and dissipation, which has been so much disseminated among our countrymen. If it were totally abolished, it would do much good."

Another voice from Virginia has been raised on this subject, in a strain more copious and not less emphatic; carrying with it the utmost degree of authority. I refer to what Judge Tucker has published in his edition of Blackstone's Commentaries. He has been accused of weakness in believing in the practicability of the abolition of slavery in Virginia; but his error on this point, if it be one, does not detract from the weight of his evidently deep, mournful conviction of the *necessity* of the measure. A personage so conspicuous for the extent of his enquiries in the moral sciences; filling a high judicial station; born amid the slavery of which he discourses; incessantly conversant with all its properties and effects; will be heard as oracular on the subject, however warmly his judgment as to the cure may be assailed. We find him, in the year 1795, using this language. "The introduction of slavery into this country is, at this day, considered among its greatest misfortunes."* And, in 1803, he went fully into the question, in his Appendix to the first volume of his author. As I wish to use him only as a witness to the practical character of the institution, I will merely take some few of his statements in relation to it.

"Early had our forefathers sown the seeds of an evil, which, like a leprosy, hath descended upon their posterity

* Letter to Dr. Belknap, 4th vol. Mass. Hist. Collec.

with accumulated rancour, visiting the sins of the fathers upon succeeding generations.

"From a view of our jurisprudence respecting slaves, we are unavoidably led to remark, how frequently the laws of nature have been set aside in favour of institutions, the pure result of prejudice, usurpation, and tyranny. We have found actions, innocent, or indifferent, punishable with a rigour scarcely due to any, but the most atrocious offences against civil society; justice distributed by an unequal measure to the master and the slave; and even the hand of mercy arrested, where mercy might have been extended to the wretched culprit, had his complexion been the same with that of his judges.

"Will not our posterity curse the days of their nativity with all the anguish of Job? *Will they not execrate the memory of those ancestors, who, having it in their power to avert evil, have, like their first parents, entailed a curse upon all future generations?* We know that the rigour of the laws respecting slaves unavoidably must increase with their numbers: What a blood-stained code must that be which is calculated for the restraint of *millions* held in bondage! Such must our unhappy country exhibit within a century, unless we are both wise and just enough to avert from posterity the calamity and reproach, which are otherwise unavoidable."

Stronger testimony than this could not be adduced; but we have much that is more particular, and of more recent date, from similar sources. I will make use of some of the representations which were published in 1817* by General Robert G. Harper; a gentleman born and brought up in one of the southern states; now resident in a slave-holding state; who has personally surveyed almost every part of our country, with a most attentive eye; and whose powers of discrimination and judgment it would be superfluous to celebrate. "No person, says he, who has seen the slave-holding states,

* Letter to the Secretary of the Colonization Society. See also, in the first annual Report of this Society, the description given by the Hon. Mr. Mercer of Virginia, of the condition of the lowlands of that state, produced by the institution of slavery.

and those where slavery does not exist, and has compared ever so slightly their condition and situation, can have failed to be struck with the vast difference, in favour of the latter. This difference extends to every thing, except only the character and manners of the most opulent and best educated people. These are very much the same every where. But in population, in the general diffusion of wealth and comfort, in public and private improvements, in the education, manners and mode of life of the middle and labouring classes, in the face of the country, in roads, bridges, and inns, in schools and churches, in the general advancement of improvement and prosperity, there is no comparison. The change is seen the instant you cross the line, which separates the country where there are slaves, from that where there are none. Even in the same state, the parts where slaves most abound, are uniformly the worst cultivated, the poorest, and the least populous; while wealth and improvement uniformly increase, as the number of slaves in the country diminishes. I might prove and illustrate this position by many examples, drawn from a comparison of different states, as Maryland and Pennsylvania, and between different counties in the same state, as Charles County and Frederick in Maryland; but it is unnecessary; because every body who has seen the different parts of the country, has been struck by this difference.

"Whence does it arise? I answer from this; that in one division of the country the land is cultivated by freemen, for their own benefit; and in the other almost entirely by slaves, for the benefit of their masters. It is the obvious interest of the first class of labourers, to produce as much and consume as little as possible; and of the second class to consume as much and produce as little as possible. What the slave consumes is for himself; what he produces is for his master. All the time that he can withdraw from labour is gained to himself: all that he spends in labour is devoted to his master. All that the free labourer, on the contrary, can produce is for himself: all that he can save is so much added to his own stock. All the time that he loses from labour is his own loss.

"This, if it were all, would probably be quite sufficient, to account for the whole difference in question. But unfortunately it is far from being all. Another and still more injurious effect of slavery remains to be considered.

"Where the labouring class is composed wholly, or in a very considerable degree of slaves, and of slaves distinguished from the free class by colour, features and origin, the ideas of labour and of slavery soon become connected, in the minds of the free class. This arises from that association of ideas, which forms one of the characteristic features of the human mind, and with which every reflecting person is well acquainted. They who continually from their infancy see black slaves employed in labour, and forming by much the most numerous class of labourers, insensibly associate the ideas of labour and of slavery, and are almost irresistibly led to consider labour as a badge of slavery, and consequently as a degradation. To be idle, on the contrary, is in their view the mark and the privilege of freemen. The effect of this habitual feeling, upon that class of free whites which ought to labour, and consequently upon their condition and the general condition of the country, will be readily perceived by those who reflect on such subjects. It is seen in the vast difference between the labouring class of whites in the southern and middle, and those of the northern and eastern states. Why are the latter incomparably more industrious, more thriving, more orderly, more comfortably situated, than the former? The effect is obvious, to all those who have travelled through the different parts of our country. What is the cause? It is found in the association between the idea of slavery, and the idea of labour; and in the feeling produced by this association, that labour the proper occupation of negro slaves, and especially agricultural labour, is degrading in a free white man.

"It is therefore obvious that a vast benefit would be conferred on the country, and especially on the slave-holding districts, if all the slave labourers could be gradually and imperceptibly withdrawn from cultivation, and their place supplied by free white labourers."

Such are the warning accents of the South itself.—

Nearly the same have been uttered in Congress within the few years past, by representatives from the same quarter. There are other traits of evil and opprobrium so notorious in the case, that if we had not direct testimony with respect to them, it might be considered as given. Of these, I will notice merely the general character and condition of the negro slave as such. Mr. Clay, the distinguished speaker of the Federal House of Representatives, has described the whole class as "degraded and debased, aliens to the society of which they are members, and cut off from all its higher blessings."* This outline might be sufficient, but it is incomplete; and I do not wish to proceed with it, or fill up the canvas. Of the negro-slave, however, I would add, that from the brutal ignorance in which he is and *must* be kept, he almost ceases to be a moral agent; he scarcely prefers a claim to the quality of man.

> Man is a being, holding large discourse
> Looking before and after.

A slave is incapable of looking either before or after; he can feel comfort, only in proportion as he is destitute of all manly pride; as his mind is darkened, and rendered callous to its abjection. Every thing, indeed, is told of his place in the scale of animated creation, and of his general lot, in mentioning one of the numerous varieties of wretchedness and degradation to which he is liable, and through which he is almost daily seen passing—the SALE AT AUCTION; not singly alone, but in family groupes, to be dragged apart as it may happen, in the gripe of the highest bidders, and driven under the lash to a new scene of bondage, with the chance of forming new associations and sympathies not secure in their progress or at the moment of their maturity, from being severed and for ever dissolved in the same ruthless manner.

Think of hundreds of thousands—nay millions, for it is thus we must now count—of human beings, in whom the ends of Providence for the species, are thus horribly defeated; the divine image so revoltingly defaced, and the majesty of the Creator so perilously outraged:—Add to

* Speech to the Colonization Society.

this all the other traits and effects of the institution, confessed by the Southern States; and say, whether it is one which those States can, in consistency, or without crime, seek to spread over a new and vast theatre, for the mitigation of their own sufferings or fears under it—Whether Congress can lend themselves to such an enterprise, for such a purpose.

If it could be considered as a certain means of the ultimate preservation of some of the states from servile wars of a sanguinary and destructive character, we might doubt that the Federal Government would have a sufficient apology even in this object, for allowing the mildew to be shed on so extensive and fair a creation. But, it would, in that point of view, afford at most only a palliative and respite. The North West Territory constituted a similar case; and the enlightened men, who, at the time of the cession, conducted the affairs of Virginia, were far from thinking that the safety of the South required that it should be used as an outlet, and made a new plantation and nursery of the evil. They cannot be alleged to have foreseen or expected the acquisition of the countries beyond the Mississippi; and the extracts which I have made from the Virginia debates, show, that they were even more alive to the danger* growing out of the increase of their slaves, than their successors would seem to be. They submitted cheerfully, in the name of their constituents, to the privation of the faculty of emigrating with their slaves to the fine regions of the Ohio and Illinois; fully compensated, as they doubtless thought, by the *rectitude* of the proceeding of preserving those regions from negro-slavery; and the greater security from its perils, with which they provided their posterity and the Union, in the multiplication of kindred and associated communities free from this cause of weakness.

They were too well versed in the elements of political economy to hazard the idea now urged, that the number of the slaves would be the same, whether these remained con-

* They were well aware that it depended upon the consideration of the *positive* number of the blacks beyond a certain point, rather than upon the *comparative*, in reference to that of the whites.

fined to the original domain of slavery, or were dispersed over the new states which might be admitted into the Union. If this idea were seriously entertained, it would argue an astonishing ignorance of the most prominent laws of the animal kingdom, and of the diffusion of mankind over the earth. So early as the year 1751, Dr. Franklin taught us what would lead to a very doctrine; as the following extracts from one of his essays of that date* will shew.

"Any occasional vacancy in a country (if the laws are good) will soon be filled by natural generation. Who can now find the vacancy made in Sweden, France, or other warlike nations, by the plague of heroism forty years ago; in France, by the expulsion of the Protestants; in England, by the settlement of her colonies; *or in Guinea, by a hundred years exportation of slaves, that has blackened half America?*"

"There is no bound to the prolific nature of plants, or animals, but what is made by their crowding and interfering with each other's means of subsistence. Was the face of the earth vacant of other plants, it might gradually be sowed and overspread with one kind only, as, for instance, with fennel; and were it empty of other inhabitants, it might, in a few years, be replenished from one nation only, as, for instance, with Englishmen. Thus there are supposed to be now upwards of one million of English souls in North America (though it is thought scarce 80,000 have been brought over sea) and yet, perhaps, there is not one the fewer in Britain, but rather many more, on account of the employment the colonies afford to manufactures at home."

"In fine, a nation well regulated is like a polypus: take away a limb, its place is soon supplied; cut it in two, and each deficient part shall speedily grow out of the part remaining. Thus, if you have room and subsistence enough, as you may say, by dividing, make ten polypuses out of one, you may, of one, make ten nations, equally populous and powerful; or, rather, increase a nation ten fold in numbers and strength."

I feel in some sort ashamed to appeal further to autho-

* On Population, 4th vol. Am. ed. of his works.

rity on this point; but as the axioms, hitherto so called, both of the moral and physical economy of nature, seem destined to be controverted in this Missouri question, I will remark, that Malthus confirms the opinions of Franklin; and will quote from the former a single passage as an illustration. "Population has a constant tendency to increase beyond the means of subsistence, whatever these may be. Africa has been at all times the principal mart of slaves. The drains of its population in this way have been great and constant, particularly since their introduction into the European colonies; but, perhaps, as Dr. Franklin observes, it would be difficult to find the gap, that has been made by a hundred years exportation of negroes, which has blackened half America. For, notwithstanding this constant emigration, the loss of numbers from incessant war, and the checks to increase, from vice and other causes, it appears that the population is continually passing beyond the means of subsistence."*

Before the settlement of the country North West of the Ohio, the proposition that the numbers of the New England race would be the same, whether they remained at home altogether, or emigrated thither, as they did, in a perennial stream, would have been quite as true and plausible as is that which I have cited respecting the negro slaves.† As to the last, wherever they are well treated, the power of population is left to exert itself almost with perfect liberty. With them, it meets few or none of the moral checks, which limit it among freemen.‡ Thus, as the negroes are to have in Missouri, according to the anti-restrictionists, a more abundant supply of wholesome food, they must multiply there at least as fast as the whites; and their treatment in our Southern States being asserted to be good, and likely to become better, were a part of them removed—they must,

* 1st vol. Essay on Population, B. I.

† Dr. Seybert remarks, in his Statistics, that "in Massachusetts, Rhode Island, New Jersey, and Delaware, all of them states whose population is migratory, there was *an increase of the rate of the increase of the population*, as well as an actual increase of their numbers." And he asks, "Did the migrations from these states tend to advance the rate of their increase?" The answer must undoubtedly be in the affirmative.

‡ See Malthus.

in those states, soon again reach the maximum of numbers for which means of subsistence could be had.§ You would then have at no very distant period of time, nearly an equal intensity of the evil in its original seat; and, in the new and more extensive field, a multifarious growth rapidly advancing to the same point.

Our experience in this respect is complete and indisputable. From 1790 to 1810, Maryland, Virginia, and the two Carolinas, supplied Georgia, Kentucky, and Tennessee with a multitude of slaves. Yet their number received an astonishing increase in the former; the parent stock proved the more prolific, and quickly repaired the drain. Dr. Seybert, taking three periods—from 1790 to 1800, from 1800 to 1810, and 1790 to 1810 states, that in North Carolina, for every period, the slaves increased in a ratio greater than the free inhabitants; and that in Virginia, and South Carolina, there were irregularities. "In Virginia, during the two first periods, the slaves increased in a ratio greater, and during the third period in a ratio less, than the free population. In South Carolina, during the first and third periods, the slaves increased in a ratio less, and during the second period in a ratio greater than the free population." In *all* these states, he adds, the number of slaves *was actually augmented.* The following table of the proportion of the free persons in them to the slaves, at different periods, will set the matter under consideration in a still stronger light.

	In 1790	In 1800	In 1810
Maryland, for every 100 free persons, there were	47·54	44 50	45·16
Virginia, do. do.	82·40	64 35	67 43
North Carolina, do. do.	34·60	38 61	43.66
South Carolina, do. do.	80 60	73 28	89·76

During the periods above mentioned, importations from abroad were forbidden in Maryland, Virginia and North

§ With respect to a state like Virginia, for instance, possessing a fruitful soil, and having but 13·92 persons to the square mile, it could hardly be supposed, that she would labour under the apprehension of wanting, within half a century, the means of subsistence for a part of her population, or being obliged to stint it, though it should continue to double every twenty-two or twenty-five years. Connecticut has 56 04 persons to the square mile, and yields them a good supply of food. The United Provinces of Holland have 275, and depend upon the products of their own agriculture —All this illustrates in the comparison the blighting influence of the institution of slavery.

Carolina; but allowed in South Carolina. The addition from this source was not so great as to deserve to be taken into the account. On the other hand, the natural increase in the states supplied with slaves, kept pace or rather in advance. Kentucky is a remarkable instance. In 1800, her slave population exceeded somewhat forty thousand; by 1810, it was double. She received, no doubt, in that interval, large accessions from without; but still the increase by procreation would have given a duplication in twenty years. Kentucky may be taken as an example of what would occur beyond the Mississippi, adopting the data as to more abundant and better food, &c. from which the anti-restrictionists reason. If we furnish this new field for the black population—that is; a scope co-extensive with that open to the white, we shall establish a kind of race between the two as to numbers; to be won infallibly by the former, unless it be stayed in its progress by the sword. What a dreadful futurity for this empire, and for the cause of liberty, does not this fact present, in either alternative!

Much stress is laid upon the *humanity* of providing an outlet for the supernumerary slaves of the old states, and an opportunity to any portion of them, of being removed to a scene of greater abundance and ease. Were we to admit that the physical condition of the few thousands who might be annually transported thither, would be improved, could we, however, regard this as a consideration sufficient to justify Congress in allowing so vast and favoured a tract of the earth, to be subjected to the institution of slavery, with its pestilent genius and its hideous shapes? Would there not be an infinitely more elevated and comprehensive humanity in averting it from the white population who, we may trust, will cover that region; or even, abstractly, in precluding the existence of that host of black *slaves* with which we may be sure it will be cursed, should the pretensions of Missouri be ratified. A certain quantity of animal food more or less, a less oppressive and protracted toil, will not alter the generical character of the bondsman. The *class* will remain what Mr. Clay has described them to be, and with the traits which I have added to his profile sketch,

Real humanity shudders at the idea of the indefinite multiplication of such a class; as philanthropy will shudder at every stride of American power, if we are always to carry this ghastly vision in our train. Herds of slaves must be as offensive in their existence as men, to the Deity, who sees in it the profanation of his glorious work, and the denial or oblivion of his omnipotence, as it is to the pride of our cultivated reason, and the sensibility of our purified hearts—

> And what man, seeing this,
> And having human feelings, would not blush,
> And hang his head, to think himself a man?

It is hard to believe, that the number carried from the old States, would gain in any very material degree by the translation. Many of them must fall into the hands of *traders;* there must be a severance of natural and tender ties; the exchange of masters—of the hereditary and paternal owner, for the adventurer—may prove, by the difference of character, an aggravation of their general lot, not to be compensated by a more liberal supply of food and clothing; for this is all that is promised for them: it is their *animal* existence alone we are taught to hope may be improved. Yet how much additional misery even to the slave, can we not conceive as consistent with the kind of advantage which I have mentioned! In new and distant settlements, where the speedy acquisition of wealth is the ruling passion, and the censorship over private conduct is exceedingly slight, if any prevail,—what security is there that tender youth, or infirm age, or disease will be a title to exemption from the severest labours of the field?—that the privilege of the Sabbath may not be denied, and the repose of the night invaded?—that all the excesses of violence natural to the possession of an absolute personal dominion, may not be habitually indulged? Under such circumstances, the hope of any literary or religious instruction such as is sometimes permitted in the South, would be entirely chimerical. This consolation for the bruised spirit must be altogether withheld.

The amelioration of the condition of the slave in our present slave holding states is ascribed, in great part, to the

influence of a sound and active public opinion, created almost, since the establishment of the present Federal Government. Will he find the same public opinion,—his best protection,—in all the districts beyond the Mississippi to which he will be liable to be dragged? This may be doubted. The influence of positive law in his favour,—feeble every where, because it cannot reach domestic life in some of its most oppressive details—must, too, be considerably less in remote situations and widely scattered settlements.

Something is said of the greater probability and better opportunity of universal emancipation: But who can be the dupe of such an illusion? The extension of slavery to four new States has not brought us nearer to the object; it is notoriously the farther removed on this account. The enhancement of the value of a possession never yet engendered a greater readiness to relinquish it gratis. When the slaves shall abundantly multiply, as they must do, we will hear of laws against the manumission of individuals, enacted upon the same grounds as those which are alleged for the similar legislation in the old States. We shall hear of the institution being permitted or exacted, as it has been with us, in one district of country, because it had grown to a dangerous size and taken indestructible root in the neighbouring one; and propagating itself thus, it will be always declared and thought, at every enlargement, more difficult to be subdued, or even assailed.

The general habit of slave-holding has never produced and never will produce, in individuals, the disposition to forsake the practice. The very multitude of the victims blunts our natural sense of the enormity of the institution; familiarity with it not only softens its horrors, but hides its dangers, to the eye of the mind; a personal interest in its continuance doubly locks the heart and hoodwinks the understanding. The fact is sufficiently notorious, that contests have taken place in the States northwest of the Ohio, happily rescued by Congress from this bane, of which the subject was its revival there; and that, of the parties, those accustomed to it in their original residence, have been uniformly arrayed on the affirmative side.

Humanity in this question of negro-slavery, is in general only a phasis of *expediency*. It is a suspicious plea: the abettors of the slave trade in England, vociferated it incessantly, and affirmed that the lot of the negro was vastly improved by his removal from his native soil to the plantations of the West Indies. Mr. Wilberforce animadverted upon the case, in language which I cannot refrain from repeating.

"These pretended principles of humanity are the very principles on which have been rested the grossest systems of bigotry, and superstition that ever disgraced the annals of mankind. On what other principles was it that Mahomet sent forth his Mussulmen to ravage the world? Was it not these that lighted the fires of the inquisition? Have not both these systems been founded on the notion of your having a right to violate the laws of justice, for the purposes of humanity? Did they not both plead that they were promoting the eternal happiness of mankind; and that their proceedings were therefore to be justified on the dictates of true and enlarged benevolence? But the religion I profess is of another nature; it teaches me first to do justice, and next to love mercy; not that the claims of these two will ever be really found to be jarring and inconsistent. When you obey the laws of God, when you attend to the claims of justice, you will then also best consult and most advance the happiness of mankind. This is true, this is enlarged benevolence; and of this it may be affirmed in the language of a great writer, 'that her seat is the bosom of God, her voice the harmony of the world.'"

I have already, by the foregoing considerations, determined how far it is *expedient* for the countries beyond the Mississippi to receive domestic slavery—of which a great lawyer has justly said that "in whatever light we view it, it may be deemed a most pernicious institution;—immediately so to the unhappy person who suffers under it; finally so to the master who triumphs in it, and to the state which allows it."* Some few more points illustrative of its

* Hargrave.—Argument in the case of the negro Somerset.

nature with us, deserve to be glanced at in reference to the interests of the territories of which Congress is the tutelary director.

Dr. Franklin, in the essay on population* which I have quoted above, enumerating the causes that impede the progress of white population and even tend to its reduction, gives a conspicuous place to the introduction of slaves. His language is as follows.

"The negroes brought into the English sugar islands have greatly diminished the whites there; the poor are by this means deprived of employment, while a few families acquire vast estates, which they spend in foreign luxuries; and educating their children in the habit of those luxuries, the same income is needed for the support of one, that might have maintained one hundred. The northern colonies having few slaves, increase in whites. Slaves also pejorate the families that use them; the white children become proud, disgusted with labour, and, being educated in idleness, are rendered unfit to get a living by industry."

A gentleman of Baltimore, in a pamphlet† which will be read by all who wish to understand the subject of our negro-slavery, has examined it particularly under this aspect of its effect upon the numbers of the white population, and marshalled the following propositions:—1. In a slave-state, a slave population increases by procreation faster than the white population. 2. The white population in a slave-state does not increase so fast by at least thirty or forty per cent, in a term of twenty years, as the same population does in a state where there are none or but few slaves. 3. Every slave, in whatever country, may be said to occupy a place which would be filled by a freeman. 4. The supply of the means of subsistence is not so great in a state where slavery exists, as it would be were there no slavery; and consequently, the whole population is the less numerous.

These propositions are fully sustained and developed in the pamphlet cited above; and I need not, therefore, dwell upon them for the purpose of demonstration. Indeed, they must be self-evident to all who have attended to the census of

* 1751. † The Missouri Question: by Daniel Raymond, Esq.

the United States, and possess any knowledge of political arithmetic and the principles of population.

Applying them to the question before us, we are led to the following as certain consequences of the establishment of negro slavery beyond the Mississippi.—The soil will not be made to yield an equal fund for the subsistence of man.—The whole population will be less in numbers.—The free white population will increase less rapidly there, by nearly one half, than it otherwise would.—It will be less in positive amount, in more than this proportion:—It will be finally outnumbered by the slave-population.

The last of these consequences is especially appalling, when we consider that no country in which personal slavery has prevailed to any considerable extent, has escaped servile wars; and that the fruits of a century of civilized industry, the proudest monuments of the most refined art, and the most admirable creations of state wisdom may be laid waste in the struggles, and for ever lost in the triumph, of the desperate multitude, whom a jealous policy had debarred from knowing their value, and a cruel yoke prepared for every excess of havoc. History both ancient and modern is full of example of furious and destructive revolt. The Helots had nearly destroyed the Spartan government which so long derided the assaults of other foes. Rome, even in the meridian of her power and glory, was brought to the brink of ruin by the slaves whom she despised. Numerous examples of a much more recent date and startling admonition, might be cited. Why should the countries beyond the Mississippi, of all that have cherished the same institution, alone escape this great calamity of rebellion, one of its natural appendages? Do we count upon a special dispensation in their favour, from that Almighty and Impartial Judge, who, Mr. Jefferson tells us, "has no attribute which can side with the American master in such a contest?"

The public welfare, which the Federal Government is charged to promote, in administering the Constitution, is not that of the moment; the posterity to which it is "to *secure* the blessings of liberty," is not merely the next generation; "the people of the United States" committed to its

care, are not solely those who inhabit the present United States, but all who shall be at any time embraced within the future compass of the Union. It must look forward, then; combine all probabilities and chances in its deliberations; and consult the interests of the whole empire in their most enlarged sense, and equitable connexion. With respect to the establishment of slavery in the Missouri, there is no view which it could take of them, or of its own duty, that would not dictate every effort for the prevention of that catastrophe, unless "experience be a cheat, and fact a liar."— As to the Constitution, it points decisively and steadily in the same direction. To the legislator who still doubts, I would again say, using the impressive language of the poet—

> "But read the instrument, and mark it well:
> Th' oppression of a tyrannous control
> Can find no warrant there."

NOTES.

Note A.—Page 4.

THE leaders of the Revolution frequently referred in their public papers, to the maxims of the New Testament respecting the equality of mankind in the sight of Heaven, and the bonds of brotherhood declared to involve the whole human race. We have been scandalized of late, in this country, by attempts to justify slavery upon the authority of scripture. No sophism can now be put forth on this subject, which is not to be found abundantly refuted in the printed discussions of England concerning the slave trade. A great man of Virginia, Patrick Henry, taught us a lesson which it is almost too soon to forget "*It is a debt we owe to the purity of our religion, to show that it is at variance with that law which warrants slavery.*"* In truth, there is scarcely a parable or sermon in the whole history of the Saviour's life, but what presents the strongest arguments against slavery. The abridgment of this evil is among the most remarkable triumphs of Christianity; and nothing illustrates the influence in this respect, of its spirit, more, than the general opinion which at first prevailed wherever negro-slavery existed, that the black would be necessarily free when baptised. I subjoin some extracts from good authorities to show the operation of Christianity on this score.

From Ward's Law of Nations.

"The existence of slavery, was long protected in Europe. We saw it universal before the Christian æra; nor could it be expected that a new religion whose establishment was accomplished under a cruel length of persecution, and which looked for success to insinuation and conviction alone, should immediately effectuate the reforms which it came only to recommend. *Christianity* however, in conformity with its principles, claims the merit of having gone farthest towards the abolition of this debasing institution. It is indeed the great, and almost the only cause of its abolition, in the opinion of Grotius.

"When however the milder doctrines preached by Christ, came really to be well understood and disseminated in their genuine purity; the effect upon this part of the then received law, was visible and permanent. The professed and assigned reasons for most of the charters of manumission, from the time of Gregory the Great, to the thirteenth century, were the religious and pious considerations of the fraternity of men, the imitation of the example of Christ, the love of our Maker, and the hope of redemption. Enfranchisement was frequently given upon a death-bed, as the most acceptable service that could be offered, and when the sacred character of the priesthood came to obtain more universal veneration; to assume its functions was the immediate passport to freedom.†

"We have seen in a former chapter the universal existence of slavery during the earlier ages, and it was shown to be chiefly owing to the efforts of Christianity

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* Letter to Anthony Benezet, published in the Life of that Philanthropist.

† The enfranchisement of slaves in England arose most particularly from these principles of piety: The manner of it has been well described by Sir Thomas Smith (Commonwealth, 3. 10.) and Dr. Brady (Gen. Pref. to his Hist.)

that the institution was abolished. In the attempt to effectuate the abolition, and the success which in the end attended it, we have a full proof of the *general* influence of this religion upon the mind, since no passage of the New Testament has absolutely *forbidden* the custom; and it is merely therefore from the spirit of the system of morality there displayed, that men collected what ought to be their conduct in this respect. Commanded to look upon all mankind as their brethren, it wanted little combination of the reasoning faculties to discover that it was incompatible with such an injunction to hold them in chains, exclusive of the benevolent effects upon the heart, which the religion was calculated *generally* to produce, and which, when produced, did that from analogy which was not expressly commanded. After this, and what was said in the beginning of this section, it is of little consequence to object that the custom of slavery remained for a great length of time, or that the church itself was possessed of numbers of slaves. We have shown that the custom of enfranchisement was the effect chiefly of pious and christian motives, and that the example was generally set by the ministers of religion. No law, it must be owned, is to be met with, by which the custom was abolished all at once, nor could such a law have ever been justified: I do not mean on account of the claims of the rights of property, (which, if they are incompatible with divine institutions, should never be so much considered as to retard their effect,) but on the principles of the very benevolence which it was meant to consult; for the men who would have been the object of it, being thus thrown suddenly on the world, without protection, or the means of support, would have been put in a worse condition than they were in before. It must be owned also, that avarice, and the love of absolute dominion, might have thrown considerable obstacles in the way of the abolition.

"When *Suarez* marks the difference which he very justly holds between the law of nations and the law of nature, he adduces among other proofs, the abolition of slavery as arising from the positive institutions of the *Christian* church.

"But nothing on this subject can be more forcible than the language of the learned Sir Thomas Smith, speaking of bondage and bondmen. "Howbeit," says he, "since our realme hath received the Christian religion, which maketh us all in Christ, *brethren*, and in respect of God and Christ *conservos;* men beganne *to have conscience* to hold in captivitie and such extreme bondage, him whom they must acknowledge to be their brother, and as wee use to terme him, *Christian;* that is, who looketh in Christ, and by Christ, to have equal portion with them in the gospel and salvation. Upon this scruple, the holy fathers and friars, in their confessions, and specially in their extreme and deadly sicknesses, burthened the consciences of them whom they had in their hands; so that temporal men, by little and little, by reason of that terror in their conscience, were glad to manumitte all their villaines."*

"Dr. Robertson, in a very learned and copious note upon the state of slaves during the earlier ages in Europe, has forestalled much that might be adduced farther on the score of authority, with respect to enfranchisement on christian motives. To that note I shall therefore refer the reader, and content myself with pointing out a few other instances, which powerfully confirm the opinion; such as the decree of the third Lateran council, under Pope Alexander III. by which it is expressly declared, that all Christians ought to be exempt from slavery; and a law of Sweden, about the year 1299, known by the name of king Birger's law, by which the sale of slaves is prohibited, expressly on account of the injustice of such a practice among men, *whom Christ made free at the price of his blood.*

* Commonwealth of England, 137.

From Robertson's Charles V. vol. 1st. note 20.

"The gentle spirit of the Christian religion, together with the doctrines which it teaches, concerning the original equality of mankind, as well as the impartial eye with which the Almighty regards men of every condition, and admits them to a participation of his benefits, are inconsistent with servitude. But in this, as in many other instances, considerations of interest, and the maxims of false policy led men to a conduct inconsistent with their principles. They were so sensible, however, of the inconsistency, that to set their fellow Christians at liberty from servitude was deemed an act of piety highly meritorious and acceptable to Heaven. The humane spirit of the Christian religion struggled with the maxims and manners of the world, and contributed more than any other circumstance to introduce the practice of manumission. When Pope Gregory the Great, who flourished towards the end of the sixth century, granted liberty to some of his slaves, he gives this reason for it. 'Cum redemptor noster, totius conditor naturæ, ad hoc propitiatus humanam carnem voluit assumere, ut divinitate suæ gratia, dirempto (quo tenebamur captivi) vinculo, pristinæ nos restituerat libertati; salubriter agitur, si homines, quos ab initio liberos natura protulit, & jus gentium jugo substituit servitatis, in ea, quâ nati fuerant, manumittentis beneficio libertate reddentur.—*Gregor Major. ap. Potgiess. lib.* 4. *c.* 1. § 3. Several laws or charters founded on reasons similar to this, are produced by the same author. Accordingly a great part of the charters of manumission previous to the reign of Louis X. are granted pro amore Dei, pro remedio animæ, & pro mercedæ animæ.—*Murat. Antiq. Ital. vol.* 1. *p.* 849, 850. *Du Cange, voc.* manumissio. The formality of manumission was executed in a church, as a religious solemnity.

"Manumissio: was frequently granted on death bed or by latter will. As the minds of men are at that time awakened to sentiments of humanity and piety, these deeds proceeded from religious motives, and are granted *pro redemptione* animæ, in order to obtain acceptance with God

"Conformably to the same principles, princes on the birth of a son, or upon any other agreeable event, appointed a certain number of slaves to be enfranchised, as a testimony of their gratitude to God from their benefit.—*Marculsi Form. lib.* 1. *cap.* 39. There are several forms of manumission published by Marculfus, and all of them are founded on religious considerations, in order to procure the favour of God, or to obtain the forgiveness of their sins.—*Lib.* 11. *c.* 23, 33, 34. *edit. Baluz*"

"The influence of Christianity in putting a stop to slavery, appears in the first Christian emperor Constantine, who commanded, under the severest penalties, all such as had slaves, to set them at liberty. He afterwards contrived to render the manumission of them much easier than formerly, for instead of recurring to the forms prescribed by the Roman laws, which were attended with great difficulties, and a considerable expense, he gave leave to masters to enfranchise their slaves in the presence of a bishop, or a minister and a Christian assembly." —*Universal History, vol.* xv. *p.* 574, 577.

Note B.—Page 4.

The following quotations from some of our State Constitutions, will show how far we are *committed* by our general principles.

"All men are born equally free and independent.

"All men have certain natural, essential, and inherent rights—among which are, the enjoying and defending life and liberty, acquiring, possessing, and protecting property; and, in a word, of seeking and obtaining happiness.

"Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property."

"A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government." *Constitution of New Hampshire.*

"All men are born free and equal, and have certain natural, essential, and unalienable rights: among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

"Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people: and not for the profit, honour, and private interest of any one man, family, or any one class of men."

"Each individual of the society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to the standing laws.

"A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government." *Constitution of Massachusetts.*

"All men are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety: *therefore*, no male person, born in this country, or brought from over sea, ought to be holden by law to serve any person as a servant, slave, or apprentice, after he arrives to the age of twenty-two years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent after they arrive to such age, or bound by law for the payment of debts, damages, fines, costs, or the like."

Constitution of Vermont.

"All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness." *Constitution of Pennsylvania.*

"Through Divine goodness, all men have, by nature, the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of attaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, &c. &c.

"All courts shall be open; and *every man*, for an injury done him in his reputation, person, moveable or immoveable possessions, shall have remedy by due course of law, and justice administered according to the *very right of the cause*."

Constitution of Delaware.

"The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

"Every *man* hath a right to petition the legislature, for a redress of grievances, in a peaceable and orderly manner." *Constitution of Maryland.*

"*No man, or set of men*, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.

"A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

"Perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed." *Constitution of North Carolina.*

"All freemen, when they form a social compact, are equal; and *no man*,

or set of men, are entitled to exclusive, separate, public emoluments or privileges, from the community, but in consideration of public services.

"All courts shall be open, and *every person*, for any injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right and justice administered without sale, denial, or delay."

Constitution of Kentucky.

"There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-two years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant, under pretence of indenture, or otherwise, unless such person shall enter into such indenture while at a state of perfect freedom, and on condition of a bona fide consideration, received, or to be received, for their service, except as before excepted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of this state, or, if made in the state, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships." *Constitution of Ohio.*

"Government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive to the good and happiness of mankind.

"All courts shall be open; and *every man*, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

Constitution of Tennessee.

"There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto, hereafter made and executed out of the bounds of this state, be of any validity within the state."

Constitution of Indiana.

"Neither slavery nor involuntary servitude shall hereafter be introduced into this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-two years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture hereafter made, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration, received, or to be received, for their service. Nor shall any indenture of any negro or mulatto, hereafter made and executed out of this state, or, if made in this state, where the term of service exceeds one year, be of the least validity, except those given in cases of apprenticeship." *Constitution of Illinois.*

Note C.—Page 5.

The doctrine of the natural subjection of some one part of the human race to the other, originated with Aristotle. In his first book of Politics, his position is that "the Greeks and some of the adjoining nations, being superior in genius, have a natural right to empire, and that the rest of mankind appear to be, from their innate stupidity, intended by nature for slavery and toil." All the modern writers on the law of nature have been at pains to refute this fine theory, especially Puffendorf. *Hobbes* approached to it in his doctrine that every man being by nature at war with every man, the one has a perpetual right to reduce the other to servitude, when he can accomplish the end. He also, has been assailed

by the jurists, and signally defeated in the argument. There is not, with these exceptions, one writer of note on the Law of Nature and Nations, whose authority can be fairly pleaded in an attempt to justify slavery *of such an origin and character as our Negro-Slavery;* and it is, therefore, surprising that an American writer in replying to the charges of the Edinburgh Reviewers on this head, should have referred them to the Grotiuses, Puffendorfs, and Paleys whose principles pronounce in fact our condemnation. They admit slavery to be lawful only when founded on captivity in war, crime, or self-sale; in respect to the first and last source, their doctrine is exploded in the works of Montesquieu, Vattel, Beattie, Blackstone, &c.

Mr. Fox in one of his masterly speeches respecting the slave trade thus animadverts on the doctrine of Aristotle and his disciples.

"I recollect that one of the ancient philosophers, no less a character than Aristotle, wishing to establish some defence of slavery, says, '*The barbarians are of a different race from us, and were born to be slaves to the Greeks.*' Now, sir, if any better reason could be found in justification of slavery, I should think that most fertile genius would have been the first to discover it. He saw domestic tyranny exercised in an extreme degree, and this in states where political tyranny was not suffered. He asked himself the reason, and after he had searched his wonderful invention (finding slavery to be the practice of his country, and not wishing to condemn it) he could resort to no other argument than that 'the Barbarians were inferior to the Greeks by nature; and the Greeks have strength to conquer them' It is true many of these Barbarians were of the same colour with the Greeks; still, however, it was necessary to establish a distinction in the nature of the different men, in order to assign any real reason for permitting the difference in their treatment.

"As to setting up a distinction of nature between people of our own colour; it is what no one will bear to hear. To say there are any whites of an inferior species, marked out by nature to be slaves to other whites, is not to be borne. It would fill us all with horror to authorize slavery any where, on this principle, with respect to white men. Is it not quite as unjust, because some men are black, to say there is a natural distinction as to them; and that black men, because they are black, ought to be slaves? Set aside the difference of colour, and is it not the height of arrogance to allege, that because we have strong feelings and cultivated minds, it would be a great cruelty to make slaves of us; but that because they are yet ignorant and uncivilized, it is no injury at all to them? Such a principle once admitted, lays the foundation of a tyranny and injustice that have no end."

Note D.—Page 13.

Extracts from the Inaugural Address of General Washington.

"It would be peculiarly improper to omit in this first official act, my fervent supplications to that Almighty Being who rules over the universe,—who presides in the councils of nations,—and whose providential aids can supply every human defect, that his benediction may consecrate to the liberties and happiness of the people of the United States, a government instituted by themselves for these essential purposes: and may enable every instrument, employed in its administration, to execute with success the functions allotted to his charge. In tendering this homage to the great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own, nor those of my fellow citizens at large, less than either. No people can be bound to acknowledge and adore the invisible hand, which conducts the affairs of men, more

than the people of the United States. Every step, by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency. And in the important revolution just accomplished in the system of their united government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted, cannot be compared with the means by which most governments have been established, without some return of pious gratitude, along with an humble anticipation of the future blessings which the past seem to presage."

"The foundations of our national policy will be laid in the pure and immutable principles of private morality; and the pre-eminence of free government, be exemplified by all the attributes which can win the affections of its citizens, and command the respect of the world. I dwell on this prospect with every satisfaction which an ardent love for my country can inspire; since there is no truth more thoroughly established, than that there exists in the economy and course of nature, an indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity: since we ought to be no less persuaded, that the propitious smiles of heaven can never be expected on a nation that disregards the eternal rules of order and right, which heaven itself has ordained."

Extracts from the answer of the Senate and House of Representatives to that Address.

"We feel, sir, the force, and acknowledge the justness of the observation, that the foundation of our national policy should be laid in private morality. If individuals be not influenced by moral principles, it is in vain to look for public virtue: it is, therefore, the duty of legislators to enforce, both by precept and example, the utility as well as the necessity of a strict adherence to the rules of distributive justice."

"We feel with you the strongest obligations to adore the invisible hand which has led the American people through so many difficulties, to cherish a conscious responsibility for the destiny of republican liberty, and to seek the only sure means of preserving and recommending the precious deposit in a system of legislation, founded on the principles of an honest policy, and directed by the spirit of a diffusive patriotism."

Note E.—Page 15.

The two states mentioned in the text, Georgia and South Carolina, were particularly averse to any interference with the slave-trade, on the part of the Federal Government. In the convention most of the states were anxious to insert a provision authorizing the immediate, total abolition of the diabolical traffic. This was resisted peremptorily by the two just mentioned; and the compromise was at length effected which is found in the ninth section of the first article of the constitution. The earnestness of Georgia and South Carolina was further shown by their insisting on the security in the fifth article, against any amendment to the constitution affecting the faculty reserved to them, of continuing to prosecute the trade for twenty years. In order to carry the point they consented, though with the greatest reluctance, to the power over navigation and commerce. There is an explanation of this adjustment in the Virginia debates, from Mr. George Mason, which is worth transcribing.

"This business was discussed at Philadelphia for four months, during which time the subject of commerce and navigation was often under consideration; and I assert that eight states out of twelve, for more than three months, voted for re

quiring two-thirds of the members present in each house to pass commercial and navigation laws. True it is, that afterwards it was carried by a majority, as it stands. If I am right, there was a great majority for requiring two-thirds of the states in this business, till a compromise took place between the Northern and Southern States; the Northern States agreeing to the temporary importation of slaves, and the Southern States (Georgia and South Carolina) conceding, *in return*, that navigation and commercial laws should be on the footing on which they now stand. If I am mistaken, let me be put right These are my reasons for saying that this was not a *sine qua non* of their concurrence. The Newfoundland fisheries will require that kind of security which we are now in want of. The Eastern States therefore agreed at length, that treaties should require the consent of two-thirds of the members present in the Senate."

Note F.—Page 21.

Mr. Madison stated, in the Virginia Convention, that the restriction upon Congress in regard to the suppression of the slave-trade, was "a restraint on the exercise of a power expressly delegated to Congress, namely, that of regulating commerce with foreign nations." Governor Randolph made the same allegation (p. 428, Virginia Debates.) The general act of Congress of 1807, suppressing the slave-trade, shews a sense of an entire control over the domestic commerce in slaves, by the regulations which it makes respecting their transportation coastwise. The exception made in favor of internal transportation would have been wholly superfluous, had not a constitutional power been felt to exist.

Note G.—Page 23.

We are told by Mr. Jefferson in his Notes on Virginia, that emancipation was formally planned there in the legislature. His language is as follows: The first assembly which met after the establishment of the commonwealth appointed a committee to revise the whole code of laws. Among the most remarkable alterations proposed in the plan of revisal was the following.

"To emancipate all slaves born after the passing the act. The bill reported by the revisors does not itself contain this proposition; but an amendment containing it was prepared, to be offered to the legislature whenever the bill should be taken up, and further directing, that they should continue with their parents to a certain age, then be brought up, at the public expense, to tillage, arts or sciences, according to their geniuses, till the females should be eighteen, and the males twenty-one years of age, when they should be colonized to such places as the circumstances of the time should render most proper, sending them out with arms, implements of household and of the handicraft arts, seeds, pairs of the useful domestic animals, &c. to declare them a free and independent people, and to extend to them our alliance and protection, till they have acquired strength; and to send vessels at the same time to other parts of the world for an equal number of white inhabitants; to induce whom to migrate hither proper encouragements were to be proposed."

Patrick Henry, in the letter to Anthony Benezet already quoted, expresses himself thus as to abolition. "*I believe a time will come when an opportunity will be offered to abolish this lamentable evil.*" This opportunity of beginning the work, is now offered in the possession of the vast province of Louisiana, to which Judge Tucker in his Notes referred, as a proper theatre for colonization, even while it was held by Spain. There is room enough there for the establishment of a colony of blacks which might, with proper aid and care in the outset, become a

flourishing community; and gradually absorb a large proportion of the slaves in the southern states. If we suppose that they would act finally, in their independent state, as our enemies, they would still be less formidable *without*, than they are likely to prove *within*.

Note II.—Page 32.

The framers of the constitution were almost universally familiar with the Commentaries of Blackstone, in the first volume of which there is a complete refutation of the notion of a *right* of property in the offspring of the slave Judge Tucker, in his notes, having quoted Blackstone on this head, makes the following observation.

"Thus by the most clear, manly, and convincing reasoning does this excellent author refute every claim, upon which the practice of slavery is founded, or by which it has been supposed to be justified, at least in modern times."

Judge Tucker then speaks from himself, in a manly and convincing strain, which deserves repetition.

"Men who will shut their ears against this moral truth, that all men are by nature *free*, and *equal*, will not even be convinced that they do not possess a *property* in an *unborn* child; they will not distinguish between allowing to *unborn* generations the absolute and unalienable rights of human nature, and taking away that which they *now possess;* they will shut their ears against truth, should you tell them the loss of the mother's labour for nine months, and the maintenance of a child for a dozen or fourteen years, is amply compensated by the service of that child for as many years more, as he has been an expense to them. But if the voice of reason, justice, and humanity, be not stifled by sordid avarice or unfeeling tyranny, it would be easy to convince even those who have entertained such erroneous notions, that the right of one man over another is neither founded in nature nor in sound policy. That it cannot extend to those *not in being;* that no man can in reality be *deprived* of what he doth not possess: that fourteen years of labour by a young person in the prime of life, is an ample compensation for a few months of labour lost by the mother, and for the maintenance of a child, in that coarse homely manner that negroes are brought up: and lastly, that a state of slavery is not only perfectly incompatible with the principles of government, but with the safety and security of their masters. History evinces this. At this moment we have the most awful demonstration of it. Shall we then neglect a duty, which every consideration, moral, religious, political, or *selfish* recommends? Those who wish to postpone the measure, do not reflect that every day renders the task more arduous to be performed. We have now 300,000 slaves among us. Thirty years hence we shall have double the number. In sixty years we shall have 1,200,000: and in less than another century from this day, even that enormous number will be doubled. Milo acquired strength enough to carry an ox, by beginning with the ox while he was yet a calf. If we complain that the calf is too heavy for our shoulders, what will the ox be?"

Note I.—Page 32.

Extracts from Beattie's Elements of Moral Science. Part III.

"It is said, 'That the Africans, whom our planters, and their emissaries, buy for slaves, are publicly exposed to sale by their countrymen; and that, if we did not buy them, others would.' In answer to this, I observe, in the first place, that it cannot be pretended, that *all* the negroes imported into our colonies from Africa are procured by sale in a public market; for it is notorious, that many of them are stolen, or obtained by other indirect methods. Nor, secondly, can it be

pretended, that the planter, who buys them when imported, makes any inquiry, either into their former condition, or into the legality of that power which the merchant assumes over them; it being equally notorious, that, in every colony, the circumstances of their being black, and imported from Africa, are *alone* sufficient, in the eye of the law, to fix them in slavery for life, and to entail the same ruin upon their offspring.

"Thirdly, Though ignorant and barbarous nations, like those of Guinea, should sell their prisoners, it will not follow, that we have any right to buy them; unless we did it with a view to deliver them from misery, to improve their manners, and to instruct them in the Christian religion; purposes, which, it is well known, never enter into the head of the slave merchant. Fourthly, It is strange, that merchants who claim the privilege of purchasing whatever is offered at a price, should be so ignorant in their own trade, as not to know, that those goods only are marketable, for which there is a demand; and that buyers, as well as sellers, are necessary in commercial intercourse. Will it be pretended, that the petty kings of Africa would continue to enslave their subjects and neighbours with the same alacrity as at present, if our West Indians and the North Americans were to purchase no more slaves? As well may it be pretended, that the demand for tobacco would not be lessened, though all Europe, Asia, and Africa, were to discontinue the use of it.

"But, passing this, let me ask, in the fifth place, who it was that first taught the negroes of Africa to sell one another? Who are they, who tempt those unhappy people, by every sort of bribery that can be supposed to have influence on them, to plunder and betray, every man his neighbour, in order to get together a multitude of human victims to answer the yearly demand? Are not Europeans, and European planters, the first movers in this dreadful business? Does it then become them to charge Africa with the whole guilt of a commerce, which, but for their cunning cruelty, and avarice, would not now exist, and would never have existed? This sort of casuistry may justly be termed diabolical: for it is thus, that the most malevolent of all beings is said, first to tempt and corrupt, and then to accuse.

"I shall only add, with respect to the argument now before us, that goods are sometimes exposed to sale, which every trader knows it is not lawful to buy. He who purchases what he knows to have been stolen, is a partner in the guilt of the thief. He, who buys a human being, with a view to reduce him to the condition of a wretched negro slave, does every thing in his power to destroy the soul and the body of that human being, in order to get money for himself. And he, who tempts a poor barbarian king to punish with slavery the most inconsiderable trespass, and to involve the innocent in the same ruin with the guilty, that he may have men to give in exchange for the trinkets and luxuries of Europe, does every thing that with impunity he can do, to confound truth and justice; to introduce wickedness and misery into the dominions of that barbarian; and to promote the views, and extend the influence, of the great adversary of God and man.

"It is said, 'that the negroes are happier in our colonies than they were in their own country.' Supposing this true, it will not follow, that we are excusable in making them slaves, unless we did it with a sincere intention to make them happy; and with their free consent, founded on a belief that we mean to do so. If I, by oppression, reduce an innocent man to poverty, and if Providence endow him with strength of mind to bear his misfortunes as becomes a Christian, it is possible he may be happier in adversity than ever he was in prosperity: but will this excuse me for what I have done? If it is unlawful to enslave an inoffensive fellow creature, no unforseen and unintentional good consequences, that may follow upon it, will ever render it lawful. The knife of the ruffian may dismiss a

good man from the troubles of this life, and send him to heaven: but is it therefore lawful to murder a good man! If we estimate the morality of actions, not by the intention of the agent, but by the consequences, whereof, by the over-ruling care of a good Providence, they may be productive, we shall at once confound all moral principles.

"In this plea of the slavemongers there is something particularly shocking. By their cunning, and cruelty, and love of money, they have introduced many evils into the native countries of the negroes; which, according to the best historical information, were formerly regions of plenty and peace. And now, when they have stolen, or forced away, the unhappy victim into a distant land, and torn him for ever from the arms of consanguinity and friendship, and from every other comfort which remained for him in this world, and afterwards loaded him and his offspring with the chains of intolerable servitude, they are pleased to affirm, that he is obliged to them for delivering him from calamities, which by their means he might have been exposed to in his own country. As if an enemy were first to fill every corner of my house with poisonous or inflammable materials, and then violently to seize and cast me into a dungeon for life; telling me, that in this he did me a great favour, for that, if he had not forced me from home, I might have been burned, or poisoned, in consequence of the snares he had laid for me. What answer is due to such reasoning?

Note J.—Page 36.

The lexicographical definition of *right* is a *just* claim; and Johnson contradistinguishes it from *might* in one of his illustrations of the word. Paley explains *right* to be a claim *consistent with the will of* God. See the 9th and 10th Chapter of his M. and P. Philosophy, for doctrines on this head which tally ill with the Missouri pretension. "*Right*" says Grotius (B. I. C. 1. L. of W. & P.) "is a moral quality annexed to the person, enabling him to have and do something *justly*." See his Preliminary Discourse particularly, on this point. Puffendorf writes thus:

"*Moral power is that by which a man is enabled to do a thing lawfully and with a moral effect:* which *effect* is, That the person exercising this power, shall lay an obligation on others to perform some certain business, which he requires, or to admit some action of his as valid, or not to stop and hinder it; or that he shall confer on others a license of doing or possessing something, which license they did not before enjoy."

"*Right* is that moral quality by which we *justly* obtain either the government of persons, or the possession of things, or by force of which we may claim something as due to us. There seems to be this difference between the terms of power and right that the first does more expressly import the presence of the said quality, and does but obscurely denote the manner how one acquired it, whereas the word *right* does properly and clearly show that the quality was fairly got and is now fairly possessed." (B 1. C. 1. L. of N. and Nations) See also his 3d B. Ch 2d and C. 5th. See, too, Vattel's *Preliminaries*, for principles which show the absurdity of classing among the rights of sovereignty, the establishment of hereditary servitude.

Note K.—Page 47.

On the subject of the *rights, privileges*, and *immunities* of citizens of the United States, *as such*, there is a case in 1 Cranch, Rep. (Hepburn *vs.* Dundas and

Elijey) of which the doctrine is not a little remarkable. The following passages, which I extract from the arguments of the Counsel and the opinion of the Court, shew that the character of a citizen of the United States, is not held to imply necessarily a member of the Union.

Charles Lee—"But there may be a citizen of the United States who is not a citizen of any one of the States. The expression *a citizen of a State*, has a constitutional meaning The States are not absolutely sovereigns, but (if I may use the expression) they are *demi-sovereigns*."

E. J. Lee, in reply. "It is true that the citizens of Columbia are not entitled to the elective franchise in as full a manner as the citizens of states. They have no vote in the choice of president, vice-president, senators and representatives in Congress. But in this they are not singular. More than seven-eighths of the free white inhabitants of Virginia are in the same situation. Of the white population of Virginia one half are female—half of the males probably are under age—and not more than one half of the residue are freeholders and entitled to vote at elections. The same case happens in some degree in all the states. A great majority are not entitled to vote But in every other respect, the citizens of Columbia are entitled to all the privileges and immunities of citizens of the United States."

Chief Justice Marshall.—"It is true that *as citizens of the United States*, and of that particular district which is subject to the jurisdiction of Congress, it is extraordinary that the courts of the United States which are open to aliens, and to the citizens of every state in the Union, should be closed upon them. But this is a subject for legislative not for judicial consideration."